85-500

No.

Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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In the

Supreme Court of the United States.

October Term, 1985

EDWARD G. CARROLL and
JOHN E. BARCLAY
Petitioners

v.

WILLIAM E. ALBERTS and
DONALD T. DEVINE
Respondents

APPENDIX
TO

PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME JUDICIAL COURT OF MASSACHUSETTS

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A.1

COMMONWEALTH OF MASSACHUSETTS

Supreme Judicial Court for the Commonwealth,

At Boston, June 4 1985

In the Case No. SJC-3624

WILLIAM E. ALBERTS

vs.

DONALD T. DEVINE & others

pending in the Superior Court Department of the

Court for the County of Norfolk No. 114902

ORDERED, that the following entry be made in the docket; viz.,—

We hold today that, absent the patient's consent or a serious danger to the patient or to others, a physician owes to a patient a duty not to disclose information gained through the physician-patient relationship, and a violation of that duty gives rise to a cause of action sounding in tort. Therefore, we answer reported question number one "yes." No answer to reported question number two is required. Finally, we conclude that the religion clauses of the First Amendment do not preclude the imposition of liability on Carroll and Barclay nor bar the courts of this Commonwealth from inquiring into the church's proceedings that resulted in Alberts' failure to gain reappointment as minister of Boston's Old West Church. Therefore, we answer reported questions number three and four "no," and, because Carroll and Barclay have not established by uncontroverted affidavits and other supporting materials that Alberts cannot prove his claims, we reverse the grant of summary judgment in favor of Carroll and Barclay and the judgments entered pursuant thereto, vacate the protective order entered below, and remand this case to the Superior Court for further proceedings not inconsistent with this opinion.

By the Court,

, Clerk.

See opinion on file.

A TRUE COPY

Attest:

Deputy Assistant Clerk

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CLERK OF THE COURTS
NORFOLK COUNTY

WILLIAM E. ALBERTS *vs.* DONALD T. DEVINE & others.[1]

Norfolk. October 5, 1984. — June 4, 1985.

Present: HENNESSEY, C.J., WILKINS, ABRAMS, NOLAN, & O'CONNOR, JJ.

Practice, Civil, Appeal, Report. *Privileged Communication. Privacy. Doctor,* Privileged communication. *Religion. Constitutional Law,* Freedom of religion.

A physician owes to a patient a duty not to disclose, without the patient's consent, confidential medical information about the patient obtained as a result of the physician-patient relationship, except to meet a serious danger to the patient or to others, and a violation of that duty, resulting in damages, gives rise to a cause of action sounding in tort against the physician. [ ]

A person who induces a physician wrongfully to disclose information about a patient may be held liable to the patient for damages that flow from that disclosure provided that the person knew or reasonably should have known of the existence of the physician-patient relationship, intended to induce the physician to disclose the information or reasonably should have anticipated that his actions would induce such disclosure, and did not reasonably believe that the physician could disclose that information without violating the duty of confidentiality that the physician owed the patient. [ ]

In an action seeking to establish the liability of persons who allegedly induced a physician wrongfully to disclose information about a patient, summary judgment was incorrectly ordered where the defendants failed to demonstrate that there was no dispute of material fact that they reasonably believed that the physician could give them the information they sought without violating his duty of confidentiality to the plaintiff. [ ]

Where controversies arose concerning whether a church rule granted religious superiors the right to induce a psychiatrist to disclose confidential medical information about a patient, who was also a minister, and whether a causal connection existed between the psychiatrist's disclosure and the minister's failure to gain reappointment, the religion clauses of the First Amendment to the Federal Constitution, made applicable to the States by the Fourteenth Amendment, neither precluded inquiry by

[1] Edward G. Carroll and John E. Barclay.

the courts of the Commonwealth into the church's proceedings culminating in the minister's failure to gain reappointment, nor precluded imposition of liability on the clerical superiors. [ ]

In an action by a minister against his psychiatrist and two of the plaintiff's clerical superiors alleging a wrongful disclosure of confidential medical information, the judge improperly invoked the religion clauses of the First Amendment to the Federal Constitution, made applicable to the States by the Fourteenth Amendment, in entering a protective order for the plaintiff's superiors precluding the plaintiff from obtaining discovery and trial evidence bearing on the issue whether a causal connection existed between the psychiatrist's disclosure and the plaintiff's failure to gain reappointment. [ ]

CIVIL ACTION commenced in the Superior Court on March 4, 1975.

A motion to dismiss, a motion to amend the complaint, and motions for summary judgment were heard by *Elizabeth J. Dolan*, J., and questions of law were reported by her to the Appeals Court. The Supreme Judicial Court transferred the case on its own initiative.

Robert J. Doyle (*Bruce V. Keary* with him) for the plaintiff.

Florence E. Freeman for John E. Barclay.

Deborah S. Griffin & Ripley E. Hastings for Edward G. Carroll & another.

Jared H. Adams for Donald T. Devine.

Ann M. Gilmore, for Ad-Hoc Committee of Methodist Ministers on the Separation of Church and State, amicus curiae, submitted a brief.

O'CONNOR, J. In this action, brought by William E. Alberts, a minister of the United Methodist Church, against Donald T. Devine, a psychiatrist, and Edward G. Carroll and John E. Barclay, two of the plaintiff's clerical superiors, we hold that: (1) unless faced with a serious danger to the patient or to others, a physician owes a patient a duty not to disclose without the patient's consent medical information about the patient gained in the course of the professional relationship, and the violation of that duty gives rise to a civil action for whatever damages flow therefrom; (2) a civil action will lie against anyone who, with the requisite state of mind, induces a viola-

tion of the physician's duty of confidentiality and thereby causes injury or loss to the patient; and (3) in the circumstances of this case, the religion clauses of the First Amendment to the Constitution of the United States,[2] made applicable to the States by the Fourteenth Amendment, *Everson* v. *Board of Educ.*, 330 U.S. 1, 15 (1947); *Cantwell* v. *Connecticut*, 310 U.S. 296, 303 (1940), do not preclude inquiry by the courts of the Commonwealth into church processes regarding the appointment and the discharge of ministers, nor do those clauses preclude the imposition of liability on the clerical defendants.[3]

Alberts's amended complaint alleges that in April, 1973, and for some period of time before that, he was a minister with the Southern New England Conference of the United Methodist Church (conference), that he and the defendant Devine had entered into a contract for the provision of psychiatric services, and that implicit in their relationship was a warranty that Devine would keep confidential "all information, observations and opinions relating to the diagnosis, condition, behavior, and treatment" of Alberts that Devine might gain in his professional capacity. The complaint further alleges that on or about April 9, 1973, in violation of that warranty and in violation of Devine's explicit promise, made during the course of treatment, to "respect the confidential nature of the relationship between doctor and patient," Devine disclosed to the defendant Carroll, Resident Bishop of the Boston Area of the United Methodist Church and President of the conference, or to Carroll's representative, information about Alberts's "diagnosis, condition, behavior or treatment." The complaint alleges that Carroll and the defendant Barclay, District Superintendent of the Greater Boston District of the conference, intentionally induced the disclosure, and that Carroll and Barclay "informed numerous individual members of the [conference],

[2] "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . ."

[3] No contention has been made that the Constitution of the Commonwealth provides to any of the defendants greater protection than does the Constitution of the United States. Therefore, we do not consider any question of State constitutional law.

as well as the various boards, committees and subcommittees of that Conference concerned with the appointment of its ministers to local churches, of their opinions of [Alberts's] mental health." Furthermore, it is averred that Carroll expressed to the public and to news reporters his belief that Alberts "was mentally ill and therefore unappointable," and that his "belief was based on 'competent consultation.'" The complaint alleges that Carroll used the information he obtained from Devine to cause Alberts not to be reappointed as minister of the Old West Church in Boston, and that the unauthorized disclosures caused Alberts considerable loss of earning capacity and other financial losses, damage to his reputation, and great mental anguish requiring medical treatment.

The three defendants filed answers, and Carroll's and Barclay's answer, as amended, included the following defense: "The alleged actions by [Carroll and Barclay], if taken at all, were taken pursuant to their duties and authority as [Alberts's] superiors in the hierarchy of the United Methodist Church and as such are privileged and immune from inquiry by this Court under the First and Fourteenth Amendments of the United States Constitution."

The three defendants filed motions for summary judgment, and Devine filed a motion to dismiss. The judge allowed Carroll's and Barclay's motion for summary judgment, and she allowed their motions for entry of judgment pursuant to Mass. R. Civ. P. 54 (b), 365 Mass. 820 (1974). She denied both of Devine's motions. The judge also denied a motion filed by Alberts to amend his complaint by adding a count for tortious interference with privacy rights. Carroll and Barclay filed a motion for a protective order quashing any subpoena that might be served on them in connection with a trial of the case or on "any other person who was a member of the United Methodist Church in 1972 or 1973." The motion further requested that the judge limit further disclosure of, and exclude from evidence at trial, deposition testimony previously given, and documents previously identified, by Carroll and Barclay or other named individuals associated with the United Methodist Church. Lastly, the motion requested that the judge rule inadmissible

at trial "any evidence relating in any way to the conduct, words and thoughts of defendants Barclay and Carroll and of any other members of the United Methodist Church in 1972 or 1973." As grounds for their motion, Carroll and Barclay asserted a "constitutional prohibition of inquiry by the civil courts into matters of church doctrine and administration." The judge allowed the motion in its entirety.

At the same time that she made those rulings, the judge reported the following questions to the Appeals Court: (1) "[W]hether disclosures [of confidential medical information] by a psychiatrist of a former patient constitutes a cognizable cause of action within the Commonwealth of Massachusetts"; (2) "[W]hether a cause of action for invasion of privacy existed within the Commonwealth of Massachusetts prior to July 1, 1974"; (3) "[W]hether the actions of the defendants Barclay and Carroll are within the ambit of the privileges and immunities granted by the First and Fourteenth Amendments of the United States Constitution"; and (4) "[W]hether [the judge] properly invoked the First Amendment in entering the protective order for defendants Barclay and Carroll." We transferred the case to this court on our own initiative.

Before reaching the reported questions, we must consider a procedural matter: In light of the judgments entered for Carroll and Barclay, do our answers to the reported questions have any significance with respect to Alberts's claims against them? "[A]fter verdict or after a finding of facts under Rule 52 . . . [i]f [the judge] is of opinion that an interlocutory finding or order made by [her] so affects the merits of the controversy that the matter ought to be determined by the Appeals Court before any further proceedings in the trial court, [the judge] may report such matter, and may stay all further proceedings except such as are necessary to preserve the rights of the parties." Mass. R. Civ. P. 64, 365 Mass. 831 (1974). Under the rule, a trial judge may report a matter that ought to be determined at the appellate level before judgment is entered or before further proceedings take place. "In essence, the word 'report' connotes a suspension of the trial court's function pending decision by an appellate court." J.W. Smith & H.B.

Zobel, Rules Practice § 64.1 (1981). Rule 64 does not authorize a report after judgment.

It is not clear from the report nor from the judge's memorandum explaining the reasons for the report whether the judge intended that the answers to the reported questions would apply only to the claims against Devine or whether she also intended them to apply to the claims against Carroll and Barclay. In the memorandum, the judge discusses the relevancy of the questions to the claims against Devine, suggesting that, in keeping with rule 64, the judge reported the case solely to expedite the disposition of the claims against Devine. For example, the judge explained that the questions involving the religion clauses are important to the claims against Devine because, in order to establish damages as to Devine, particularly with respect to loss of earnings, Alberts would have to show that the information allegedly disclosed by Devine contributed to Alberts's loss of employment. The judge also observed that, in order to present that proof, inquiry will be necessary into "the processes of appointment or nonappointment by the governing body of the church together with consideration by a civil court of the interpretation and application of certain codes or canons of [the] church as embodied within its 'Book of Discipline.'" Other language in the memorandum, however, suggests that the judge intended that the Appeals Court's answers to the reported questions would also affect the claims against Carroll and Barclay. For example, the memorandum's concluding paragraph states: "The issues raised on the summary judgments are reported after decision and entry of final judgments as to Barclay and Carroll and the issues raised on interlocutory matters of the plaintiff's motion to amend to add a count of invasion of privacy and the denial of the defendant Devine's motion to dismiss for failure to state a cause of action cognizable by this court are further reported due to the nature of the complaint as filed and the status of the pleadings." Without arguing the procedural point, counsel for Carroll and Barclay have assumed that our answers to the questions will apply to Alberts's claims against them. In his brief, Alberts urges us to reverse the grant of summary judgment in favor of Carroll and Barclay, and, in

their briefs, Carroll and Barclay request that we affirm that grant. Carroll and Barclay also ask us to affirm the judge's denial of Alberts's motion to add to his complaint a common law claim for invasion of privacy. Although Alberts filed a timely claim of appeal from the entry of judgments in favor of Carroll and Barclay, he has not further perfected the appeal, apparently in reliance on the judge's report as a vehicle for review. See Mass. R. A. P. 5, as amended, 378 Mass. 930 (1979). In light of that reliance, fairness requires that we treat the claims against Carroll and Barclay as if they were here on appeal, with Alberts assigning as error the unfavorable rulings by the trial judge on the reported questions. Therefore, our answers to the questions affect Alberts's claims against Devine, Carroll, and Barclay.

Reported Question 1. A physician's duty not to disclose confidential information. Until this case, we have not confronted the question whether a patient has a nonstatutory, civil remedy against a physician if the physician, without the patient's consent, makes an out-of-court disclosure of confidential information obtained in the course of the physician-patient relationship. In *Bratt* v. *International Business Machs. Corp.*, 392 Mass. 508 (1984), although we focused our attention on a different issue — whether the disclosure of medical information concerning an employee to an employer by a company physician violated the employee's statutory right of privacy granted by G. L. c. 214, § 1B — we "recognize[d] a patient's valid interest in preserving the confidentiality of medical facts relayed to a physician." *Id.* at 522. We also quoted with approval in *Bratt* the New Jersey Supreme Court's statement that "[a] patient should be entitled to freely disclose his symptoms and condition to his doctor in order to receive proper treatment without fear that those facts may become public property. Only thus can the purpose of the relationship be fulfilled." *Bratt* v. *International Business Machs. Corp.*, *supra* at 522-523, quoting *Hague* v. *Williams*, 37 N.J. 328, 336 (1962).

We continue to recognize a patient's valid interest in preserving the confidentiality of medical facts communicated to a physician or discovered by the physician through examination.

"The benefits which inure to the relationship of physician-patient from the denial to a physician of any right to promiscuously disclose such information are self-evident. On the other hand, it is impossible to conceive of any countervailing benefits which would arise by according a physician the right to gossip about a patient's health." *Hague* v. *Williams, supra* at 335-336. "To foster the best interest of the patient and to insure a climate most favorable to a complete recovery, men of medicine have urged that patients be totally frank in their discussions with their physicians. To encourage the desired candor, men of law have formulated a strong policy of confidentiality to assure patients that only they themselves may unlock the doctor's silence in regard to those private disclosures. The result which these joint efforts of the two professions have produced . . . has been urged or forecast *in una voce* by commentators in the field of medical jurisprudence." *Hammonds* v. *Aetna Casualty & Sur. Co.*, 243 F. Supp. 793, 797 (N.D. Ohio 1965), and authorities cited therein. The Supreme Court of Oregon has recently held that a patient in that State has a civil right of recovery if a physician discloses without privilege confidential information obtained from the patient in the course of the physician-patient relationship. *Humphers* v. *First Interstate Bank*, 298 Or. 706 (1985). Patients in Massachusetts deserve no less protection.

Few cases consider the out-of-court physician-patient privilege. "That is undoubtedly due to the fact that the confidentiality of the relationship is a cardinal rule of the medical profession, faithfully adhered to in most instances, and thus has come to be justifiably relied upon by patients seeking advice and treatment." *MacDonald* v. *Clinger*, 84 A.D.2d 482, 483 (N.Y. 1982). Of the courts that have considered the question, most have held that a patient can recover damages if the physician violates the duty of confidentiality that plays such a vital role in the physician-patient relationship. See *Humphers* v. *First Interstate Bank, supra*; *Horne* v. *Patton*, 291 Ala. 701, 708-709 (1974); *Simonsen* v. *Swenson*, 104 Neb. 224, 227 (1920); *Hague* v. *Williams, supra* at 336; *MacDonald* v. *Clinger, supra* at 482; *Hammonds* v. *Aetna Casualty*

& Sur. Co., supra at 802 (Ohio law). Only three decisions have come to our attention in which courts have declined to recognize such a cause of action, and we do not find their reasoning persuasive. See *Logan* v. *District of Columbia*, 447 F. Supp. 1328, 1335 (D.D.C. 1978) (D.C. law); *Collins* v. *Howard*, 156 F. Supp. 322, 324 (S.D. Ga. 1957) (Georgia law); *Quarles* v. *Sutherland*, 215 Tenn. 651, 657 (1965).

The courts that have imposed on physicians a duty of confidentiality and have recognized a cause of action to enforce that duty have grounded their decisions on the determination that public policy favors the protection of a patient's right to confidentiality. Courts have found indications of that public policy in statutes creating a testimonial privilege with respect to confidential communications between a patient and a physician and in licensing statutes that authorize the suspension or revocation of a license to practice medicine if a doctor divulges a professional secret without authorization. The absence of statutes of that type, however, does not indicate that no public policy favoring a patient's right to confidentiality exists. No testimonial privilege statute existed in Alabama when the Supreme Court of Alabama decided *Horne* v. *Patton, supra*. Nor did such a statute exist in New Jersey when the Supreme Court of New Jersey decided *Hague* v. *Williams, supra*. The principle that society is entitled to every person's evidence in order that the truth may be discovered may require a physician to testify in court about information obtained from a patient in the course of treatment. However, that principle has no application to disclosures made out of court. Hence, it does not preclude a cause of action based on such disclosures.

In Massachusetts, the Legislature has demonstrated its recognition of a policy favoring confidentiality of medical facts by enacting G. L. c. 111, §§ 70 and 70E, to limit the availability of hospital records. Furthermore, G. L. c. 233, § 20B, creates an evidentiary privilege as to confidential communications between a psychotherapist and a patient. The fact that no such statutory privilege obtains with respect to physicians generally and their patients, *Bratt* v. *International Business Machs. Corp., supra* at 522 n.22, does not dissuade us from declaring

that in this Commonwealth all physicians owe their patients a duty, for violation of which the law provides a remedy, not to disclose without the patient's consent medical information about the patient, except to meet a serious danger to the patient or to others. See *Horne* v. *Patton*, *supra* at 709; *Simonsen* v. *Swenson*, *supra* at 227-229; *Hague* v. *Williams*, *supra* at 336; *MacDonald* v. *Clinger*, *supra* at 487; *Berry* v. *Moench*, 8 Utah 2d 191, 196-199 (1958); *Hammonds* v. *Aetna Casualty & Sur. Co.*, *supra* at 797.[4]

It is true, as Devine argues, that no Massachusetts case before this one recognizes such a theory of liability. However, as we said in *George* v. *Jordan Marsh Co.*, 359 Mass. 244, 249 (1971), a case in which we recognized for the first time the tort of infliction of emotional distress, "[t]hat is true only because the precise question has never been presented to this court for decision. That argument is therefore no more valid than would be an argument by the plaintiff that there is no record of any Massachusetts law denying recovery on such facts. No litigant is automatically denied relief solely because he presents a question on which there is no Massachusetts judicial precedent. It would indeed be unfortunate, and perhaps disastrous, if we were required to conclude that at some unknown point in the dim and distant past the law solidified in a manner and to an extent which makes it impossible now to answer a question which had not arisen and been answered

[4] In *Bratt* v. *International Business Machs. Corp.*, *supra* at 524, this court concluded that an employer may "have a substantial and valid interest in aspects of an employee's health that could affect the employee's ability effectively to perform job duties." We stated that "when medical information is necessary reasonably to serve such a substantial and valid interest of the employer, it is not an invasion of privacy, under [G. L. c. 214] § 1B, for a physician to disclose such information to the employer." *Id.* In that case, the physician was retained by the employer, and no physician-patient relationship existed. *Id.* at 510, 522 n.21. Furthermore, the court focused only on the privacy statute, and not on the nonstatutory duty of confidentiality we address today. The exception to the rule of confidentiality we announce today is not so broad as to permit a physician to disclose to a patient's employer whatever information might bear on the "employee's ability effectively to perform job duties." *Id.* at 524. Disclosure is permitted only to meet a serious danger to the patient or to others.

prior to that point. The courts must, and do, have the continuing power and competence to answer novel questions of law arising under ever changing conditions of the society which the law is intended to serve." In *Smith* v. *Driscoll*, 94 Wash. 441, 442 (1917), although the court found it unnecessary to determine "whether a cause of action lies in favor of a patient against a physician for wrongfully divulging confidential communications," the court "assumed" that "for so palpable a wrong, the law provides a remedy." We, too, believe that for so palpable a wrong, the law provides a remedy.

In *Hammonds* v. *Aetna Casualty & Sur. Co.*, *supra* at 802-803, the court held that from the contractual relationship between a physician and a patient there arises a fiduciary obligation to hold in trust confidential information. In *MacDonald* v. *Clinger*, *supra* at 486, the court concluded that the physician-patient relationship "contemplates an additional duty springing from but extraneous to the contract and that the breach of such duty is actionable as a tort." This court previously has recognized that the physician-patient relationship possesses fiduciary (see *Warsofsky* v. *Sherman*, 326 Mass. 290, 292 [1950]), as well as contractual (see *Sullivan* v. *O'Connor*, 363 Mass. 579, 583 [1973]), aspects. We hold today that a duty of confidentiality arises from the physician-patient relationship and that a violation of that duty, resulting in damages, gives rise to a cause of action sounding in tort against the physician.

Reported Question 2. Nonstatutory invasion of privacy. On October 23, 1973, the Legislature approved St. 1973, c. 941, "An Act establishing the right of privacy and a remedy to enforce such right." The Act amended G. L. c. 214 by inserting § 1B, providing: "A person shall have a right against unreasonable, substantial or serious interference with his privacy. The superior court shall have jurisdiction in equity to enforce such right and in connection therewith to award damages."[5] As the parties recognize, the privacy statute does not apply here be-

[5] General Laws c. 214, as appearing in St. 1973, c. 1114, § 62, contained no § 1B, but, by St. 1974, c. 193, § 1, the Legislature reenacted § 1B as it appeared in St. 1973, c. 941.

cause the facts alleged by Alberts occurred in 1972, before the statute's enactment. Therefore, Alberts asks us to recognize for the first time a common law cause of action for invasion of privacy. Before the Legislature established a statutory right of privacy, this court stated that "[w]e need not discuss to what extent in Massachusetts violation of privacy will give rise to tort liability to individuals." *Commonwealth* v. *Wiseman*, 356 Mass. 251, 258 (1969). In a line of earlier cases, we explicitly refused to decide whether a common law right of privacy existed in this Commonwealth. See *Frick* v. *Boyd*, 350 Mass. 259, 263 (1966), and cases cited. We need not decide that question now. Even if there was a right of privacy at common law, that right would not permit recovery in this case beyond the recovery available for a physician's violation of the duty of confidentiality, recognized in our answer to reported question 1, and for the inducement of such a violation, recognized in our answer to question 3.

Reported Question 3. Effect of the religion clauses. Before discussing the religion clauses, we must consider whether, apart from them, a patient may hold liable one who induces a physician to violate the duty of confidentiality that the physician owes the patient. We hold that one who, with the state of mind we describe below, induces a physician wrongfully to disclose information about a patient, may be held liable to the patient for the damages that flow from that disclosure. The inducement need not be a threat, nor a promise of reward, but "may be a simple request or persuasion exerting only moral pressure." Restatement (Second) Torts § 766, comment k (1979).

To establish liability the plaintiff must prove that: (1) the defendant knew or reasonably should have known of the existence of the physician-patient relationship; (2) the defendant intended to induce the physician to disclose information about the patient or the defendant reasonably should have anticipated that his actions would induce the physician to disclose such information; and (3) the defendant did not reasonably believe that the physician could disclose that information to the defendant without violating the duty of confidentiality that the physi-

cian owed the patient. See *Hammonds* v. *Aetna Casualty & Sur. Co., supra* at 803; Restatement (Second) of Torts § 876(b) (1979) ("For harm resulting to a third person from the tortious conduct of another, one is subject to liability if he knows . . . (b) that the other's conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other so to conduct himself"); Restatement of Torts § 757(c) (1939) (before one is subject to liability for use or disclosure of a trade secret obtained from another one must have notice of the fact that disclosure of the trade secret by the other is a breach of duty) (see *Curtiss-Wright Corp.* v. *Edel-Brown Tool & Die Co.*, 381 Mass. 1, 5-6 [1980]); *Banks* v. *Everett Nat'l Bank*, 305 Mass. 178, 182 (1940) ("one who participates in the breach of trust by a fiduciary is responsible for the damages resulting to the trust if he knew that the fiduciary was committing such a breach or if he had knowledge of such facts that he could not reasonably be held to have acted in good faith"); Restatement (Second) of Torts § 766, comment i (1979) (to be subject to liability for interference with a contractual relationship a person must have knowledge of the contract and that he is interfering with it).

The principle we announce is but an application of the general rule that a plaintiff may hold liable one who intentionally induces another to commit any tortious act that results in damage to the plaintiff. See *Nelson* v. *Nason*, 343 Mass. 220, 222 (1961) (negligence); *Halberstam* v. *Welch*, 705 F.2d 472, 481-486, 487-489 (D.C. Cir. 1983) (burglary and murder); *Cobb* v. *Indian Springs, Inc.*, 522 S.W.2d 383, 387 (Ark.1975) (negligence); *Smith* v. *Thompson*, 103 Idaho 909, 911-912 (Ct. App. 1982) (arson); *Duke* v. *Feldman*, 245 Md. 454, 457 (1966) (assault and battery); *Rael* v. *Cadena*, 93 N.M. 684, 684-685 (Ct. App. 1979) (battery); *Russell* v. *Marlboro Books*, 18 Misc. 2d 166, 179 (N.Y. Sup. Ct. 1959) (libel).

In this case, deposition testimony established that Carroll and Barclay knew of the physician-patient relationship between Devine and Alberts and that they intended to induce Devine to disclose information about Alberts. To be entitled to summary judgment, therefore, apart from consideration of the

relationship between church and State, Carroll and Barclay had to demonstrate that there was no dispute of material fact that they reasonably believed that Devine could give them the information they sought without violating his duty of confidentiality owed to Alberts. Carroll and Barclay did not do so.

We now reach the third reported question: "[W]hether the actions of the defendants Barclay and Carroll are within the ambit of the privileges and immunities granted by the First and Fourteenth Amendments of the United States Constitution." We read the reported question to include two questions. First, do the religion clauses preclude the imposition of liability on Carroll and Barclay? And, second, in connection with Alberts's proof of damages, may the court constitutionally inquire into the church's proceedings that resulted in Alberts's failure to gain reappointment as minister of the Old West Church?

We begin with the recognition that the First Amendment prohibits civil courts from intervening in disputes concerning religious doctrine, discipline, faith, or internal organization. *Jones* v. *Wolf*, 443 U.S. 595, 602 (1979). *Serbian E. Orthodox Diocese for the U.S. & Can.* v. *Milivojevich*, 426 U.S. 696, 709 (1976). *Presbyterian Church in the U.S.* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 449 (1969). *Watson* v. *Jones*, 80 U.S. (13 Wall.) 679, 727 (1871). See *United Kosher Butchers Ass'n* v. *Associated Synagogues of Greater Boston, Inc.*, 349 Mass. 595, 598 (1965); *Reardon* v. *Lemoyne*, 122 N.H. 1042, 1047 (1982). Carroll and Barclay claim that, as Alberts's clerical superiors, they had the duty to obtain information about Alberts's mental and emotional well-being, and that the Book of Discipline of the United Methodist Church privileged them to seek such information from Devine. They argue that the principle enunciated in the cases cited above precludes judicial inquiry into the merit of Alberts's claims against them and into the process by which the members of the church voted to retire Alberts. We disagree.

It is clear that the assessment of an individual's qualifications to be a minister, and the appointment and retirement of ministers, are ecclesiastical matters entitled to constitutional pro-

tection against judicial or other State interference. *Kedroff* v. *St. Nicholas Cathedral*, 344 U.S. 94, 116 (1952). *Gonzalez* v. *Roman Catholic Archbishop of Manila*, 280 U.S. 1, 16-17 (1929). *Kaufmann* v. *Sheehan*, 707 F.2d 355, 358-359 (8th Cir. 1983). However, this case does not involve the propriety of the United Methodist Church's refusal to reappoint Alberts as minister of the Old West Church. Nor does this case involve Alberts's qualifications to serve as a minister. A controversy concerning whether a church rule grants religious superiors the civil right to induce a psychiatrist to violate the duty of silence that he owes to a patient, who happens to be a minister, is not a dispute about religious faith or doctrine nor about church discipline or internal organization. Nor is a controversy concerning the causal connection between a psychiatrist's disclosure of confidential information and a minister's failure to gain reappointment such a dispute.

Even if the First Amendment precludes judicial inquiry as to whether a church rule provided that Carroll and Barclay had the right to seek medical information from Alberts's psychiatrist, so that the court must assume in Carroll's and Barclay's favor the existence of a church rule granting that right, it does not follow that the religion clauses preclude the imposition of liability on Carroll and Barclay. Although the freedom to believe "is absolute," the freedom to act "cannot be. Conduct remains subject to regulation for the protection of society. The freedom to act must have appropriate definition to preserve the enforcement of that protection." *Attorney Gen.* v. *Bailey*, 386 Mass. 367, 375 (1982), quoting *Cantwell* v. *Connecticut*, 310 U.S. 296, 303-304 (1940). See *Braunfeld* v. *Brown*, 366 U.S. 599, 603 (1961); *Reynolds* v. *United States*, 98 U.S. 145, 164 (1878).

A law, legislatively or judicially created, that would regulate or prevent religiously motivated conduct does not violate the First Amendment if the State's interest in the law's enforcement outweighs the burden that the law imposes on the free exercise of religion. A determination of constitutionality requires a balancing of the competing interests. See *Wisconsin* v. *Yoder*, 406 U.S. 205, 215-229 (1972). *Prince* v. *Massachusetts*, 321

U.S. 158, 164-170 (1944). *Cantwell* v. *Connecticut, supra* at 307. *Catholic High School Ass'n of the Archdiocese of N.Y.* v. *Culvert*, 753 F.2d 1161, 1169 (2d Cir. 1985). Obviously, the imposition of liability on Carroll and Barclay for inducing a violation of Devine's duty to Alberts would inhibit such conduct. We must determine whether such inhibition burdens the free exercise of religion by Carroll, Barclay, or the United Methodist Church, and if it does, we must then determine whether the Commonwealth possesses an interest sufficiently compelling to justify the burden. See *Wisconsin* v. *Yoder, supra*. *Sherbert* v. *Verner*, 374 U.S. 398, 403-409 (1963). *Catholic High School Ass'n of the Archdiocese of N.Y.* v. *Culvert, supra* at 1171. *Attorney Gen.* v. *Bailey, supra* at 375.

As we have observed, churches have a significant interest in assessing the qualifications of their ministers, and in appointing and retiring them. But, in view of the freedom that ecclesiastical authorities and church members have to determine who the church's ministers will be, and in view of the numerous sources of relevant information available to assist those making such determinations — other than information available only from a minister's physician — a rule that prevents interference with physician-patient relationships will have little impact on the free exercise of religion. On the other hand, as we have discussed earlier in this opinion, public policy strongly favors judicial recognition of a physician's duty to honor the confidentiality of information gained through the physician-patient relationship. We conclude, therefore, that even if it be assumed, without inquiry, that the Book of Discipline or other rule of the United Methodist Church provides that Carroll and Barclay had a right, or even a duty, to seek medical information about Alberts from Devine, the First Amendment does not preclude the imposition of liability on those defendants. We also conclude that the First Amendment does not bar judicial inquiry into the church's proceedings culminating in Alberts's failure to gain reappointment.

Reported Question 4. Protective order. The final reported question asks: "[w]hether the [judge] properly invoked the First Amendment in entering the protective order for defendants

Barclay and Carroll." We answer that question "no." As we have stated, the First Amendment does not preclude civil courts from examining the proceedings that resulted in Alberts's failure to gain reappointment as minister of the Old West Church in order to determine whether that event resulted from wrongful conduct of the defendants. Accordingly, the First Amendment does not present an obstacle to Alberts's right to discovery and trial evidence bearing on that issue. This litigation in no sense involves repetitious inquiry or continuing surveillance that would amount to the excessive entanglement between government and religion that the First Amendment prohibits. See *Lynch* v. *Donnelly*, 104 S.Ct. 1355, 1364 (1984); *Lemon* v. *Kurtzman*, 403 U.S. 602, 611-625 (1971); *Walz* v. *Tax Comm'n of the City of N.Y.*, 397 U.S. 664, 668-669 (1970); *Surinach* v. *Pesquera de Busquets*, 604 F.2d 73, 78 (1st Cir. 1979).

Conclusion. We hold today that, absent the patient's consent or a serious danger to the patient or to others, a physician owes to a patient a duty not to disclose information gained through the physician-patient relationship, and a violation of that duty gives rise to a cause of action sounding in tort. Therefore, we answer reported question number one "yes." No answer to reported question number two is required. Finally, we conclude that the religion clauses of the First Amendment do not preclude the imposition of liability on Carroll and Barclay nor bar the courts of this Commonwealth from inquiring into the church's proceedings that resulted in Alberts's failure to gain reappointment as minister of Boston's Old West Church. Therefore, we answer reported questions number three and four "no," and, because Carroll and Barclay have not established by uncontroverted affidavits and other supporting materials that Alberts cannot prove his claims, we reverse the grant of summary judgment in favor of Carroll and Barclay and the judgments entered pursuant thereto, vacate the protective order entered below, and remand this case to the Superior Court for further proceedings not inconsistent with this opinion.

So ordered.

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS. **SUPERIOR COURT**
CIVIL ACTION
NO. 114902

WILLIAM E. ALBERTS, PLAINTIFF

V.

DONALD T. DEVINE ET AL, DEFENDANTS

DEFENDANT EDWARD G. CARROLL'S MOTION FOR SUMMARY JUDGMENT

The Defendant Edward G. Carroll moves the Court pursuant to Mass. R. Civ. P. 56 to enter summary judgment in his favor dismissing the Plaintiff's Complaint as to this Defendant, on the ground that there is no genuine issue as to any material fact and this Defendant is entitled to judgment as a matter of law on the following grounds:

1. The Complaint fails to state a claim upon which relief can be granted against this Defendant;

2. Any actions by this Defendant with respect to the Plaintiff which are complained of were permitted and justified by reason of this Defendant's ecclesiastical relationship to the Plaintiff and by reason of his position as a superior to the Plaintiff within the United Methodist Church;

3. This Defendant was at all times material to the Complaint the Bishop of the Southern New England Conference of the United Methodist Church. The Plaintiff was the paster in charge for Old West United Methodist Church within that Conference. It is not within this Court's power to inquire into actions taken by this Defendant with reference to the Plaintiff, while this Defendant was carrying out his duties as Bishop; nor can this Court review the failure of the Plaintiff to be reappointed as Minister of Old West Church because he was retired by vote of the 1973 Annual Conference of the United Methodist Church. The Plaintiff's action, therefore, constitutes a collateral attack upon church polity and doctrines, the Discipline of the United Methodist Church, and is a violation of the First and Fourteenth Amendments to the United States Constitution.

Defendant Edward Carroll
By His attorneys,

Deborah S. Griffin
Peabody & Arnold
One Beacon Street
Boston, Mass. 02108
(617) 523-2100

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss. **Superior Court**
Docket Number
114902

WILLIAM E. ALBERTS)
Plaintiff)
)DEFENDANT'S, JOHN E. BARCLAY
vs.)MOTION FOR SUMMARY JUDGEMENT
)
DONALD DEVINE,)
ET ALS, Defendants)

The defendant, John E. Barclay, moves this Court pursuant to Rule 56 of the Massachusetts Rule of Civil Procedure, to enter summary judgement for the defendant, John E. Barclay, dismissing the part of the plaintiff's claim which seeks relief against the defendant, John E. Barclay, on the ground that there is no genuine issue as to any material fact and that the defendant is entitled to judgement as a matter of law including, but not limited to, the following:

1. The complaint fails to state a cause of action against the defendant John E. Barclay.

2. Should this Court determine that the plaintiff's complaint sets out a cause of action against the defendant, John E. Barclay, for intentional interference with a contractual relation between the plaintiff and the defendant, Donald T. Devine, defendant Barclay was permitted such interference, if any, by reason of his ecclesiastical relationship to plaintiff.

3. The defendant, John E. Barclay, was at all times material to the plaintiff's complaint the District Superintendent of the Greater Boston District of the Southern New England Conference of the United Methodist Church. The plaintiff was the pastor-in-charge of Old West United Methodist Church within Barclay's district. It is not within this Court's power to inquire into actions taken by Barclay with reference to the plaintiff, while Barclay was carrying out his duties as District Superintendent; nor can this Court review the failure of the plaintiff to be reappointed as Minister of the Old West Church, Boston, because he was retired by vote of the 1973 Annual Conference of the United Methodist Church.

The plaintiff's action, therefore, constitutes a collateral attack upon church polity and doctrines, the Discipline of the United Methodist Church and is a violation of the First Amendment of the United States Constitution.

Florence E. Freeman
Attorney for John E. Barclay

COMMONWEALTH OF MASSACHUSETTS

Norfolk, ss. **Superior Court Docket Number 114902**

William E. Alberts Plaintiff	)	
	)	
vs.	)	**Affidavit of John E. Barclay**
	)	
Donald T. Devine, Et Als Defendants	)	

Before me the undersigned notary public appeared John E. Barclay who, being sworn by me, stated:

1. That I am the John E. Barclay who is a defendant in the above-captioned case. I am a duly ordained elder-or minister-of the United Methodist Church, a member of the Southern New England Conference of the United Methodist Church. From 1969 to 1975 I was the District Superintendent of the Greater Boston District of the Conference.

2. That one of the ministers in my charge as District Superintendent was the plaintiff William E. Alberts. My responsibilities toward him as his District Superintendent are set out in the provisions of the Discipline of the United Methodist Church attached hereto as Exhibit 1.

3. That in keeping with these responsibilities I counselled with him at his request concerning his marital problems and other phases of his service as a minister of the United Methodist Church, and in particular as the minister-in-charge at Old West United Methodist Church, Boston.

4. That as part of my responsibilities toward the plaintiff I inquired of his professional counselor and psychiatrist Donald T. Devine, a defendant in this case, for guidance as how best to assist the plaintiff in his private and church life.

5. That as part of my responsibilities as set out in the Discipline, I advised the Bishop of plaintiff's status and what might be done to help him. I attempted to obtain for plaintiff a leave of absence and succeeded in that effort for plaintiff. It was only after the leave of absence failed that retirement was determined by the Board of Ministry to be the course to follow.

6. That the Board of Ministry of the Conference, with Bishop Carroll presiding, acting in complaince with the Discipline duly moved and voted on or about June 7, 1973, to recommend to the Annual Conference of that year that the plaintiff be retired and the Conference so voted. The vote as recorded in the Conference Journel for 1973 is as follows:

Board of Ministry The report was presented by Oliver Drake, William Coleman, Lloyd Chorpenning and Frank Kaiser, and approved by the Conference. (See Disciplinary Questions) (Journal of Daily Proceedings, p. 530)

* * *

45 what member in full connection have been retired? (List alphabetically giving full name-first, middle, last-in that order)
a this year? William E. Alberts, Earl H. Furgeson, Roger E. Makepeace, Harold D. Smock, Joseph A. Stevenson, James R. Uhlinger. (Disciplinary Questions, p. 569)

7. That action of the Conference in reference to plaintiff was in compliance with the Discipline of the United Methodist Church:

"Paragraph 360. The Annual Conference may place any ministerial members thereof in the retired relation with or without their consent and irrespective of their age if such relation is recommended by the Board of the Ministry."

JOHN E. BARCLAY

Sworn to and subscribed before,

Florence E. Freeman
Notary Public
My commission expires: 4-28-89

Section X. District Superintendent

354. Duties of a District Superintendent—District superintendents are to be chosen and appointed by the bishop. They shall minister to the needs of the pastors and churches in their district by meeting and counseling with pastors and officials. Among the duties of the district superintendent are the following:

1. To travel through the district in order to preach and oversee the spiritual and temporal affairs of the Church.

2. To schedule and preside, or authorize an elder to preside, in each Charge Conference and in the Annual Church Conference.

3. To administer the program of the Church within the bounds of the district in cooperation with the pastors and the Charge Conferences, to encourage adequate salaries for pastors, to promote a concern for countinuing education for ministers, and to urge financial support of all conference and denominational causes.

4. To supervise the work of pastors in the district and counsel with them concerning their pastoral responsibilities, continuing education, and other matters affecting their ministry and personal life. The district superintendent shall be available for counsel with each pastor's family.

5. To appraise the needs and opportunities of churches within the district; to evaluate fields of labor; and within an ecumenically responsible perspective to initiate new forms of ministry, mergers, yoked fields, and long-range planning and the establishment and closing of churches.

6. To counsel with pastors and committees on Pastor-Parish Relations concerning assignments and to consult with the bishop regarding the appointment of persons approved by the Board of the Ministry.

7. To emphasize ministerial recruitment and education and to advise and encourage candidates for the ministry.

8. To issue and renew licenses to preach in accordance with the action of the district committee on the Ministry or the Board of the Ministry.

9. To cooperate with the district Committee on Church Buildings and Locations and local church Boards of Trustees or building committees in arranging acquisitions, sales, transfers, and mortgages of property and in ensuring that all charters, deeds, and other legal documents conform to the Discipline and to the laws, usages, and forms of the county, state, territory, or country within which such property is situated.

10. To participate with the other district superintendents in submitting a report to the Annual Conference reflecting the state of the conference and setting forth recommendations along with other information pertinent to the operation of the Annual Conference.

11. To see that the provisions of the Discipline are observed and to interpret and decide all questions of church law and discipline raised by the churches in the district, subject to an appeal to the president of the next Annual Conference.

12. To prepare and deliver to the succeeding district superintendent: (a) a list of all abandoned church properties and cemeteries within the bounds of the district; (b) a list of all church properties being permissively used by other religious organizations, with the names of the local trustees thereof; (c) a list of all known endowments, annuities, trust funds, investments, and unpaid legacies belonging to any pastoral charge or organization connected therewith in the district.

Paragraph 354 1972 Discipline of the United Methodist Church
pages 167-168.

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.	**SUPERIOR COURT CIVIL ACTION NO. 114902**
WILLIAM E. ALBERTS PLAINTIFF	)
V.	)
DONALD T. DEVINE, ET AL, DEFENDANTS	)

Affidavit Of Bishop Joseph H. Yeakel In Support Of Motion For Summary Judgment

I, BISHOP JOSEPH H. YEAKEL, hereby depose and state as follows:

1. I am a Bishop in the United Methodist Church. I have been a Bishop since 1972 and before that time was an ordained minister in the United Methodist Church since 1952. I am presently serving in the New York West Area of the United Methodist Church with offices in Syracuse, New York.

2. I am familiar with the Book of Discipline of the United Methodist Church and the way in which the Book of Discipline is interpreted and applied by the United Methodist Church and its clergy.

3. Attached hereto are true copies of the following pages and paragraphs of the 1972 Book of Discipline, which was the version of the Book of Discipline, in effect during 1972 and 1973: pages v and vi and paragraphs 7 through 63, pargraph 333, paragraph 354, paragraph 357, paragraphs 390 and 391 and paragraphs 1520, 1521, 1531, 1539 and 1540.

4. The United Methodist Church is a connectional church having pertinent characteristics of hierarchical organization. The organizational units, in ascending order, are the local churches (or charge), districts, and various levels of Conferences. The organizational structure of the church is set forth in paragraphs 7 through 63 of the Book of Discipline attached hereto. Each local minister's immediate superiors in office within the church hierarchy include his/her district superintendent, the bishop and the Board of Ministry in the appropriate Conference. Ordained ministers such as the Plaintiff are referred to as "members in full connection."

5. As indicated in Paragraphs 390.4 and 391.1, among the duties of a bishop is the duty to fix appointments of the preachers, including members in full connection, after consultation with the district superintendents and others.

6. In turn, Paragraph 354.4 and Paragraph 354.6 charge the district superintendents with the duty to supervise and counsel with pastors, including members in full connection, concerning matters affecting their ministry and their personal life, and to confer with the bishop and others regarding appointments within his/her district.

7. Bishops and district superintendents are expected to consider, in their evaluation of ministers for annual appointments, the same criteria which define the qualifications for admission into membership in full connection. Those criteria are set forth in Paragraph 333 of the Book of Discipline.

8. One such qualification is that the candidate for admission "shall have. . . (4) satisfied the board regarding physical, mental, and emotional health..." It is generally regarded among bishops in the United Methodist Church that the mental and emotional health of a minister is an important factor to be considered each year when planning annual appointments of ministers. It is within the authority and is a duty of bishops and district superintendents to seek information regarding the mental and emotional health of the ministers within their jurisdictions. Further evidence of such authority is found in paragraph 357 regarding disability leave.

9. If, upon learning that the bishop and the district superintendent had spoken with his psychiatrist or former psychiatrist, a minister such as the Plaintiff believed such communication with the psychiatrist was beyond the duties and authority of his superiors, the minister could have had recourse to the judicial system established by the United Methodist Church for a determination of that question under church law.

10. Paragraphs 1520, 1521, 1531, 1539 and 1540 indicate that a Bishop or other minister in the United Methodist Church may be brought to trial within the church judicial system. The procedure would have been for the minister to file a charge against the bishop (or the district superintendent) from among those listed in Paragraph 1521. Allegedly unauthorized communications could come under the charges described in Paragraphs 1521(a), (c), or (e).

Signed under the penalties of perjury this _____ day of _____, 1983.

_____
Joseph H. Yeakel

STATE OF NEW YORK
, 1983

Before me personally appeared the above-named Joseph Yeakel and swore upon his oath that the foregoing Affidavit is true, to his knowledge.

Notary Public

My Commission Expires: _____

EPISCOPAL GREETINGS

The United Methodist Church is a connectional church. It is not simply an aggregate of congregational units. It has thousands of local churches scattered over the world, and numerous institutions of various kinds, but all these are regarded as a part of a single whole, long known as "the connection." Its ministry is a connectional ministry pledged to the same ordination vows; its laity is a connectional laity, and church membership is in the connection rather than simply in a local church; and the ownership of its property is ultimately in the connection also.

Such a connectional church needs guidelines for its effective operation, and carefully developed organizational patterns for the accomplishment of its mission. Out of this need there has developed across the years the *Book of Discipline*. At first this was a small and modest book indeed, but as the Church has grown and its activities have expanded, it has become a sizable and a much involved volume, covering every aspect of the Church's ongoing life.

Traditionally United Methodists have not only been happy to be guided by the *Discipline* as a book of church law, but they have also usually regarded it with a certain degree of reverence, as representing something of the distilled wisdom of the church across the passage of almost two centuries of time. As a people subject to a respected *Discipline,* they have in turn become at least something of a disciplined people.

United Methodism has not hesitated to change its *Discipline* as new insights have come, as new situations have arisen in church and society, and as new structures for mission have appeared imperative. In fact, each succeeding General Conference has made numerous changes in the *Discipline*. The basic structure of the connectionalism

has remained largely what it has been from the beginning, but nevertheless radical alterations in former patterns have been made from time to time as necessity seemed to demand. Thus United Methodism has sought to respond to the particular challenges of the succeeding years and to prove itself a living and growing organism.

The 1972 General Conference has sought to discharge its responsibility with fidelity, and the current issue of the Discipline embodies its considered effort to provide for the entire connection patterns of operation hopefully designed to enable both the general Church and our local churches meet the serious demands of the current hour. We commend it to all our people for their guidance and encouragement, as they work together in a common task and with a common loyalty to Him who is forever the Lord of the church.

The Council of Bishops
Oliver Eugene Slater, President
Roy H. Short, Secretary

CONTENTS

Note: The basic unit in the Book of Discipline is the paragraph (¶) rather than page, chapter, section, etc. The paragraphs are numbered consecutively within each chapter, but many numbers are skipped between parts and chapters in order to allow for future enactments and to fit with the following plan:

1- 99 The Constitution, Doctrine, Doctrinal Statements, General Rules, and Social Principles
101- 299 The Local Church
301- 499 The Ministry
501- 599 The Lay Worker
601- 799 The Conferences
801-1399 Administrative Order
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PART II
DOCTRINE AND DOCTRINAL STATEMENTS AND THE GENERAL RULES
¶¶ 68-70
Historical Background ..... *page 39*

¶ 5. ***Article V. Ecumenical Relations.***—As part of the Church Universal, The United Methodist Church believes that the Lord of the Church is calling Christians everywhere to strive toward unity, and therefore it will seek, and work for, unity at all levels of church life: through world relationships with other Methodist churches and united churches related to The Methodist Church or The Evangelical United Brethren Church, through councils of churches, and through plans of union with churches of Methodist or other denominational traditions.

¶ 6. ***Article VI. Title to Properties.***—Titles to properties in The Evangelical United Brethren Church and The Methodist Church shall, upon consummation of the union, automatically vest in The United Methodist Church. Nothing in the Plan of Union at any time after the union is to be construed so as to require any local church or any other property owner of the former The Evangelical United Brethren Church or the former The Methodist Church to alienate or in any way to change the title to property contained in its deed or deeds at the time of union, and lapse of time or usage shall not affect said title or control.

DIVISION TWO—ORGANIZATION

Section I. Conferences.

¶ 7. ***Article I.***—There shall be a General Conference for the entire Church with such powers, duties, and privileges as are hereinafter set forth.

¶ 8. ***Article II.***—There shall be Jurisdictional Conferences for the Church in the United States of America and Canada, with such powers, duties, and privileges as are hereinafter set forth;[3] *provided* that in The United Methodist Church there shall be no jurisdictional or central conference based on any ground other than geographical and regional division.

¶ 9. ***Article III.***—There shall be Central Conferences for the Church outside the United States of America and Canada and, if neces-

[3] *See* Judicial Council Decision 128, *and* Amendment III, ¶ 67.

sary, Provisional Central Conferences, all with such powers, duties, and privileges as are hereinafter set forth.[4]

¶ 10. ***Article IV.***—There shall be Annual Conferences as the fundamental bodies of the Church and, if necessary, Provisional Annual Conferences, with such powers, duties, and privileges as are hereinafter set forth.[5]

¶ 11. ***Article V.***—There shall be a Charge Conference for each church or charge with such powers, duties, and privileges as are hereinafter set forth.

Section II. General Conference.

¶ 12. ***Article I.***—The General Conference shall be composed of not less than 600 nor more than 1,000 delegates, one half of whom shall be ministers and one half lay members, to be elected by the annual Conferences.[6]

¶ 13. ***Article II.***—The General Conference shall meet in the month of April or May once in four years at such time and in such place as shall be determined by the General Conference or by its duly authorized committees.

A special session of General Conference, possessing the authority and exercising all the powers of the General Conference, may be called by the Council of Bishops, or in such other manner as the General Conference may from time to time prescribe, to meet at such time and in such place as may be stated in the call. Such special session of the General Conference shall be composed of the delegates to the preceding General Conference or their lawful successors, except that when a particular Annual Conference shall prefer to have a new election it may do so.[7] The purpose of such special session shall be stated in the call, and only such business shall be transacted as is in harmony with the purpose stated in such call unless the General Conference by a two-thirds vote shall determine that other business may be transacted.[8]

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[4] *See* Amendment IV, ¶ 67.
[5] *See* Judicial Council Decision 354.
[6] *See* Judicial Council Decision 333, *and* Amendment I, ¶ 67.
[7] *See* Judicial Council Decisions 221, 226, 228, 238, 302.
[8] *See* Judicial Council Decision 227.

¶ 14. ***Article III.***—The General Conference shall fix the ratio of representation in the General, Jurisdictional, and Central Conferences from the Annual Conferences and the Provisional Annual Conferences, computed on a two-factor basis: (1) the number of ministerial members of the Annual Conference and (2) the number of church members in the Annual Conference; *provided* that each Annual Conference or Provisional Annual Conference, except for the Provisional Annual Conferences of a Central Conference or a Provisional Central Conference, shall be entitled to at least one ministerial and one lay delegate in the General Conference and also in the Jurisdictional or Central Conference.

¶ 15. ***Article IV.***—The General Conference shall have full legislative power over all matters distinctively connectional, and in the exercise of this power shall have authority as follows:[9]

1. To define and fix the conditions, privileges, and duties of church membership which shall in every case be without reference to race or status.

2. To define and fix the powers and duties of elders, deacons, supply preachers, local preachers, exhorters, and deaconesses.[10]

3. To define and fix the powers and duties of Annual Conferences, Provisional Annual Conferences, Missionary Conferences and Missions, and of Central Conferences, District Conferences, Charge Conferences, and Congregational Meetings.

4. To provide for the organization, promotion, and administration of the work of the Church outside the United States of America and Canada.[11]

5. To define and fix the powers, duties, and privileges of the episcopacy, to adopt a plan for the support of the bishops, to provide a uniform rule for their retirement, and to provide for the discontinuance of a bishop because of inefficiency or unacceptability.[12]

6. To provide and revise the Hymnal and Ritual of the Church and to regulate all matters relating to the form and mode of worship, subject to the limitations of the first and second Restrictive Rules.

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[9] *See* Judicial Council Decisions 96, 252, 256, 318, 325.
[10] *See* Judicial Council Decisions 58, 313.
[11] *See* Judicial Council Decision 182.
[12] *See* Judicial Council Decisions 55, 114, 312.

7. To provide a judicial system and a method of judicial procedure for the Church, except as herein otherwise prescribed.

8. To initiate and to direct all connectional enterprises of the Church and to provide boards for their promotion and administration.[13]

9. To determine and provide for raising and distributing funds necessary to carry on the work of the Church.[14]

10. To fix a uniform basis upon which bishops shall be elected by the Jurisdictional Conferences and to determine the number of bishops that may be elected by Central Conferences.

11. To select its presiding officers from the bishops, through a committee; *provided* that the bishops shall select from their own number the presiding officer of the opening session.[15]

12. To change the number and the boundaries of Jurisdictional Conferences upon the consent of a majority of the Annual Conferences in each Jurisdictional Conference involved.[16]

13. To establish such commissions for the general work of the Church as may be deemed advisable.

14. To secure the rights and privileges of membership in all agencies, programs, and institutions in The United Methodist Church regardless of race or status.[17]

15. To enact such other legislation as may be necessary, subject to the limitations and restrictions of the Constitution of the Church.[18]

Section III. Restrictive Rules.

¶ 16. ***Article I.***—The General Conference shall not revoke, alter, or change our Articles of Religion or establish any new standards or rules of doctrine contrary to our present existing and established standards of doctrine.[19]

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[13] *See* Judicial Council Decision 214.
[14] *See* Judicial Council Decision 30.
[15] *See* Judicial Council Decision 126.
[16] *See* Judicial Council Decisions 55, 56, 215.
[17] *See* Decisions, 4, 5, Interim Judicial Council.
[18] *See* Judicial Council Decision 215.
[19] *See* Judicial Council Decisions 86, 142, 243, 358.

Article II.—The General Conference shall not revoke, alter, or change our Confession of Faith.

¶ 17. ***Article III.***—The General Conference shall not change or alter any part or rule of our government so as to do away with episcopacy or destroy the plan of our itinerant general superintendency.

¶ 18. ***Article IV.***—The General Conference shall not do away with the privileges of our ministers of right to trial by a committee and of an appeal; neither shall it do away with the privileges of our members of right to trial before the church, or by a committee, and of an appeal.[20]

¶ 19. ***Article V.***—The General Conference shall not revoke or change the General Rules of Our United Societies.[21]

¶ 20. ***Article VI.***—The General Conference shall not appropriate the net income of the publishing houses, the book concerns, or the Chartered Fund to any purpose other than for the benefit of retired or disabled preachers, their wives, widows, and children or other beneficiaries of the ministerial pension systems.[22]

¶ 21. ***Article VII.***—The General Conference shall not do away with the following rights, which are hereby defined: In order that The Evangelical United Brethren Church shall be assured of effective representation in The United Methodist Church it is agreed that at the level of the General Conference, Jurisdictional Conferences, and Central Conferences and on all boards and agencies at the Annual Conference, Central Conference, Jurisdictional Conference, and General Conference levels, in every instance there shall be chosen, during the first three quadrenniums following union, at least twice the number of representatives coming from The Evangelical United Brethren Church membership as the relative numerical membership in said particular conference would indicate in relationship to the number of representatives coming from The Methodist Church, and further agreed that during such period every General Conference and Jurisdictional Conference, and if practical every Central Conference and Annual Conference, board, or agency, regardless of size, shall have at least

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[20] *See* Judicial Council Decision 351.
[21] *See* Judicial Council Decision 358.
[22] *See* Judicial Council Decisions 322, 330.

one such representative; *provided* that this provision shall not be applied so as to give to representatives coming from The Evangelical United Brethren Church a majority position which, except for this provision, they would not have; and further *provided* that in the Germany Central Conference during the first three quadrenniums following union the relative number of representatives coming from the former Methodist Church and the former *Evangelische Gemeinschaft* shall be equal. The relative numerical membership shall be computed by taking the membership of The Evangelical United Brethren Church as reported immediately prior to union and the total membership of the particular conference immediately after union. The General Conference may adopt legislative rules designed to carry out the intent and spirit of this provision. At the termination of the first three quadrenniums following union, this Article VII shall be automatically deleted from the Constitution.[23]

Section IV. Jurisdictional Conferences.

¶ 22. ***Article I.***—The Jurisdictional Conferences shall be composed of as many representatives from the Annual Conferences as shall be determined by a uniform basis established by the General Conference.

¶ 23. ***Article II.***—All Jurisdictional Conferences shall have the same status and the same privileges of action within the limits fixed by the Constitution. The ratio of representation of the Annual Conferences in the General Conference shall be the same for all Jurisdictional Conferences.

¶ 24. ***Article III.***—The General Conferences shall fix the basis of representation in the Jurisdictional Conferences; *provided* that the Jurisdictional Conferences shall be composed of an equal number of ministerial and lay delegates to be elected by the Annual Conferences and the Provisional Annual Conferences.

¶ 25. ***Article IV.***—Each Jurisdictional Conference shall meet at the time determined by the Council of Bishops or its delegated committee, each Jurisdictional Conference convening on the same date as the others and at a place selected by the Jurisdictional Committee on

[23] *See* Judicial Council Decisions 333, 356.

Entertainment, appointed by its College of Bishops unless such a committee has been appointed by the preceding Jurisdictional Conference.

¶ 26. *Article V.*—The Jurisdictional Conferences shall have the following powers and duties and such others as may be conferred by the General Conferences:

1. To promote the evangelistic, educational, missionary, and benevolent interests of the Church, and to provide for interests and institutions within their boundaries.[24]

2. To elect bishops and to cooperate in carrying out such plans for their support as may be determined by the General Conference.

3. To establish and constitute Jurisdictional Conference boards as auxiliary to the general boards of the Church as the need may appear and to choose their representatives on the general boards in such manner as the General Conference may determine.[25]

4. To determine the boundaries of their Annual Conferences; *provided* that there shall be no Annual Conference with a membership of fewer than fifty ministers in full connection, except by the consent of the General Conference; and *provided* further that this provision shall not apply to Annual Conferences of the former The Evangelical United Brethren Church during the first three quadrenniums after union.

5. To make rules and regulations for the administration of the work of the Church within the jurisdiction, subject to such powers as have been or shall be vested in the General Conference.

6. To appoint a Committee on Appeals to hear and determine the appeal of a traveling preacher of that jurisdiction from the decision of a trial committee.

Section V. Central Conferences.

¶ 27. *Article I.*—There shall be Central Conferences for the work of the Church outside the United States of America and Canada with such duties, powers, and privileges as are hereinafter set forth. The number and boundaries of the Central Conferences shall be determined by the Uniting Conference. Subsequently the General Confer-

[24] *See* Judicial Council Decision 67.
[25] *See* Judicial Council Decision 185.

ence shall have authority to change the number and boundaries of Central Conferences. The Central Conferences shall have the duties, powers, and privileges hereinafter set forth.

¶ 28. *Article II.*—The Central Conferences shall be composed of as many delegates as shall be determined by a basis established by the General Conference. The delegates shall be ministerial and lay in equal numbers.

¶ 29. *Article III.*—The Central Conferences shall meet within the year succeeding the meeting of the General Conference at such times and places as shall have been determined by the preceding respective Central Conferences or by commissions appointed by them or by the General Conference. The date and place of the first meeting succeeding the Uniting Conference shall be fixed by the bishops of the respective Central Conferences, or in such manner as shall be determined by the General Conference.

¶ 30. *Article IV.*—The Central Conferences shall have the following powers and duties and such others as may be conferred by the General Conference:

1. To promote the evangelistic, educational, missionary, social-concern, and benevolent interests and institutions of the Church within their own boundaries.

2. To elect the bishops for the respective Central Conferences in number as may be determined from time to time, upon a basis fixed by the General Conference, and to cooperate in carrying out such plans for the support of their bishops as may be determined by the General Conference.

3. To establish and constitute such Central Conference boards as may be required and to elect their administrative officers.[26]

4. To determine the boundaries of the Annual Conferences within their respective areas.

5. To make such rules and regulations for the administration of the work within their boundaries including such changes and adaptations of the General Discipline as the conditions in the respective areas may require, subject to the powers that have been or shall be vested in the General Conference.[27]

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[26] *See* Judicial Council Decision 69.

[27] *See* Judicial Council Decisions 142, 147, 313.

6. To appoint a Judicial Court to determine legal questions arising on the rules, regulations, and such revised, adapted, or new sections of the Central Conference Discipline enacted by the Central Conference.

7. To appoint a Committee on Appeals to hear and determine the appeal of a traveling preacher of that Central Conference from the decision of a Committee on Trial.

Section VI. Episcopal Administration in Central Conferences.

¶ 31. ***Article I.***—The bishops of the Central Conferences shall be elected by their respective Central Conferences and inducted into office in the historic manner.

¶ 32. ***Article II.***—The bishops of the Central Conferences shall have membership in the Council of Bishops with vote.

¶ 33. ***Article III.***—The bishops of the Central Conferences shall preside in the sessions of their respective Central Conferences.

¶ 34. ***Article IV.***—The bishops of each Central Conference shall arrange the plan of episcopal visitation within their Central Conference.

¶ 35. ***Article V.***—The Council of Bishops may assign one of their number to visit each Central Conference. When so assigned, the bishop shall be recognized as the accredited representative of the general Church and when requested by a majority of the bishops resident in that conference may exercise therein the functions of the episcopacy.

Section VII. Annual Conferences.

¶ 36. ***Article I.***—The Annual Conference shall be composed of ministerial members as defined by the General Conference, together with a lay member elected by each charge, the conference president of the Women's Society of Christian Service, the conference president of United Methodist Men, and the conference lay leader.[28] Each charge served by more than one minister shall be entitled to as many lay members as there are ministerial members. The lay members shall

[28] *See* Amendments II, VII, ¶ 67.

be at least twenty-one (21) years of age[29] and shall have been for the four years next preceding their election members of one of the constituent churches forming this union or of The United Methodist Church.[30]

¶ 37. *Article II.*—The Annual Conference is the basic body in the Church and as such shall have reserved to it the right to vote on all constitutional amendments, on the election of ministerial and lay delegates to the General and the Jurisdictional or Central Conferences, on all matters relating to the character and conference relations of its ministerial members, and on the ordination of ministers and such other rights as have not been delegated to the General Conference under the Constitution, with the exception that the lay members may not vote on matters of ordination, character, and conference relations of ministers. It shall discharge such duties and exercise such powers as the General Conference under the Constitution may determine.[31]

¶ 38. *Article III.*—The Annual Conference shall elect ministerial and lay delegates to the General Conference and to its Jurisdictional or Central Conference in the manner provided in this section, Articles IV and V. The persons first elected up to the number determined by the ratio for representation in the General Conference shall be representatives in that body. Additional delegates shall be elected to complete the number determined by the ratio for representation in the Jurisdictional or Central Conference, who, together with those first elected as above, shall be delegates in the Jurisdictional or Central Conference. The additional delegates to the Jurisdictional or Central Conference shall in the order of their election be the reserve delegates to the General Conference.[32] The Annual Conference shall also elect reserve ministerial and lay delegates to the Jurisdictional or Central Conference as it may deem desirable.

¶ 39. *Article IV.*—The ministerial delegates to the General Conference and to the Jurisdictional or Central Conference shall be

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[29] *See* Amendment VI, ¶ 67.

[30] *See* Judicial Council Decisions 24, 113, 129, 349, Decision 7, Interim Judicial Council, and Amendment VI, ¶ 67.

[31] *See* Judicial Council Decisions 78, 79, 132.

[32] *See* Judicial Council Decision 352.

elected by the ministerial members in full connection with the Annual Conference or Provisional Annual Conference; *provided* that such delegates shall have been traveling preachers in the constituent churches forming this union or in The United Methodist Church for at least four years next preceding their election and are in full connection with the Annual Conference or Provisional Annual Conference electing them when elected and at the time of holding the General and Jurisdictional or Central Conferences.[33]

¶ 40. ***Article V.***—The lay delegates to the General Conference and to the Jurisdictional or Central Conferences shall be elected by the lay members of the Annual Conference or Provisional Annual Conference; *provided* that such delegates be at least twenty-one (21) years of age and shall have been members of one of the constituent churches forming this union or of The United Methodist Church for at least four years next preceding their election, and are members thereof within the Annual Conference electing them at the time of holding the General and Jurisdictional or Central Conferences.[34]

¶ 41. ***Article VI.***—For a period of twelve years following union, Annual Conferences shall not have their names or boundaries changed without their consent; and during such period Annual Conferences formerly of The Evangelical United Brethren Church may in electing delegates to General, Jurisdictional, and Central Conferences and their superintendents of districts continue their time-honored methods, the provisions of Division Two, Section VII, Arts. IV and V; Division Two, Section VIII, Art. IV; and Division Three, Art. IX, notwithstanding; but nothing herein shall be construed as preventing the elimination of Annual Conferences based on race.

Section VIII. Boundaries.

¶ 42. ***Article I.***—The United Methodist Church shall have Jurisditional Conferences made up as follows:

Northeastern—Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, New York, Connecticut, Pennsylvania, New Jersey,

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[33] *See* Judicial Council Decisions 1, 162, 308.

[34] *See* Judicial Council Decisions 346, 354.

Maryland, West Virginia, Delaware, District of Columbia, Puerto Rico, Province of Ontario.

Southeastern—Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Tennessee, Kentucky, Mississippi.

North Central—Ohio, Indiana, Illinois, Michigan, Wisconsin, Minnesota, Iowa, North Dakota, South Dakota.

South Central—Missouri, Arkansas, Louisiana, Nebraska, Kansas, Oklahoma, Texas, New Mexico.

Western—Washington, Idaho, Oregon, California, Nevada, Utah, Arizona, Montana, Wyoming, Colorado, Alaska, Hawaii, Provinces of Manitoba, Saskatchewan, Alberta, and British Columbia.[35]

¶ 43. *Article II.*—The work of the Church outside the United States of America and Canada may be formed into Central Conferences, the number and boundaries of which shall be determined by the Uniting Conference, the General Conference having authority subsequently to make changes in the number and boundaries.

¶ 44. *Article III.*—Changes in the number, names and boundaries of the Jurisdictional Conferences may be effected by the General Conference upon the consent of a majority of the Annual Conferences of each of the Jurisdictional Conferences involved.[36]

¶ 45. *Article IV.*—Changes in the number, names, and boundaries of the Annual Conferences may be effected by the Jurisdictional Conferences in the United States of America and Canada and by the Central Conferences outside the United States of America and Canada according to the provisions under the respective powers of the Jurisdictional and the Central Conferences.[37]

¶ 46 *Article V. Transfer of Local Churches.*—1. A local church may be transferred from one Annual Conference to another in which it is geographically located upon approval by a two-thirds vote of those present and voting in each of the following:

a) The Charge Conference

b) The Congregational Meeting of the local church

c) Each of the two Annual Conferences involved

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[35] *See* Amendment V, ¶ 67.

[36] *See* Judicial Council Decisions 55, 56, 85, 215.

[37] *See* Judicial Council Decisions 28, 85, 217, and Decisions 1, 2, Interim Judicial Council.

The vote shall be certified by the secretaries of the specified conferences or meetings to the bishops having supervision of the Annual Conferences involved, and upon their announcement of the required majorities the transfer shall immediately be effective.

2. The vote on approval of transfer shall be taken by each Annual Conference at its first session after the matter is submitted to it.

3. Transfers under the provisions of this article shall not be governed or restricted by other provisions of this Constitution relating to changes of boundaries of conferences.

Section IX. District Conferences.

¶ 47. ***Article I.***—There may be organized in an Annual Conference, District Conferences composed of such persons and invested with such powers as the General Conference may determine.

Section X. Charge Conferences.

¶ 48. ***Article I.***—There shall be organized in each charge a Charge Conference composed of such persons and invested with such powers as the General Conference shall provide.

¶ 49. ***Article II. Election of Church Officers.***—Unless the General Conference shall order otherwise, the officers of the church or churches constituting a charge shall be elected by the Charge Conference or by the members of said church or churches at a meeting called for that purpose, as may be arranged by the Charge Conference, unless the election is otherwise required by local church charters or state or provincial laws.

DIVISION THREE—EPISCOPAL SUPERVISION

¶ 50 ***Article I.***—There shall be a continuance of an episcopacy in The United Methodist Church of like plan, powers, privileges, and duties as now exist in The Methodist Church and in The Evangelical United Brethren Church in all those matters in which they agree and may be considered identical; and the differences between these historic episcopacies are deemed to be reconciled and harmonized by and in

this Plan of Union and Constitution of The United Methodist Church and actions taken pursuant thereto so that a unified superintendency and episcopacy is hereby created and established of, in, and by those who now are and shall be bishops of The United Methodist Church; and the said episcopacy shall further have such powers, privileges, and duties as are herein set forth.[38]

¶ 51. ***Article II.***—The bishops shall be elected by the respective Jurisdictional and Central Conferences and consecrated in the historic manner at such time and place as may be fixed by the General Conference for those elected by the jurisdictions and by each Central Conference for those elected by such Central Conference.[39]

¶ 52. ***Article III.***—There shall be a Council of Bishops composed of all the bishops of The United Methodist Church. The council shall meet at least once a year and plan for the general oversight and promotion of the temporal and spiritual interests of the entire Church and for carrying into effect the rules, regulations, and responsibilities prescribed and enjoined by the General Conference and in accord with the provisions set forth in this Plan of Union.

¶ 53. ***Article IV.***—The bishops of each Jurisdictional and Central Conference shall constitute a College of Bishops and such College of Bishops shall arrange the plan of episcopal supervision of the Annual Conferences, Mission Conferences, and Missions within their respective territories.

¶ 54. ***Article V.***—The bishops shall have residential and presidential supervision in the Jurisdictional Conferences in which they are elected or to which they are transferred. Bishops may be transferred from one jurisdiction to another jurisdiction for presidential and residential supervision under the following conditions: (1) The transfer of bishops may be on either of two bases: (*a*) a jurisdiction which receives a bishop by transfer from another jurisdiction may transfer to that jurisdiction or to a third jurisdiction one of its own bishops eligible for transfer, so that the number transferred in by each jurisdiction shall be balanced by the number transferred out, or (*b*) a jurisdiction may receive a bishop from another jurisdiction and not

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[38] *See* Judicial Council Decisions 4, 114, 127.

[39] *See* Judicial Council Decision 21.

transfer out a member of its own College of Bishops. (2) No bishop shall be transferred unless he shall have given his specific consent. (3) No bishop shall be eligible for transfer unless he shall have served one quadrennium in the jurisdiction which elected him to the episcopacy. (4) All such transfers shall require the approval by a majority vote of the members, present and voting, of the Jurisdictional Conferences which are involved after consideration by the Committees on Episcopacy. After the above procedures have been followed, the transferring bishop shall become a member of the receiving College of Bishops and shall be subject to residential assignment by that Jurisdictional Conference.

A bishop may be assigned by the Council of Bishops for presidential service or other temporary service in another jurisdiction than that which elected him, provided request is made by a majority of the bishops in the jurisdiction of the proposed service.

In the case of an emergency in any jurisdiction or Central Conference through the death or disability of a bishop or other cause, the Council of Bishops may assign a bishop from another jurisdiction or Central Conference to the work of the said jurisdiction or Central Conference with the consent of a majority of the bishops of that jurisdiction or Central Conference.

¶ 55. *Article VI.*—The bishops, both active and retired, of The Evangelical United Brethren Church and of The Methodist Church at the time union is consummated, shall be bishops of The United Methodist Church.

The bishops of The Methodist Church elected by the jurisdictions, the active bishops of The Evangelical United Brethren Church at the time of union, and bishops elected by the jurisdictions of The United Methodist Church shall have life tenure. Each bishop elected by a Central Conference of The Methodist Church shall have such tenure as the Central Conference electing him shall have determined.[40]

The Jurisdictional Conference shall elect a standing Committee on Episcopacy, to consist of one ministerial and one lay delegate from each Annual Conference, on nomination of the Annual Conference delegation. The committee shall review the work of the bishops, pass

[40] *See* Judicial Council Decisions 4, 303.

on their character and official administration, and report to the Jurisdictional Conference its findings for such action as the conference may deem appropriate within its constitutional warrant of power. The committee shall recommend the assignments of the bishops to their respective residences, for final action by the Jurisdictional Conference.

¶ 56. ***Article VII.***—A bishop presiding over an Annual, Central, or Jurisdictional Conference shall decide all questions of law coming before him in the regular business of a session;[41] ***provided*** that such questions be presented in writing and that his decisions be recorded in the journal of the conference.

Such an episcopal decision shall not be authoritative except for the pending case until it shall have been passed upon by the Judicial Council. Each bishop shall report in writing annually all his decisions of law, with a syllabus of the same, to the Judicial Council, which shall affirm, modify, or reverse them.

¶ 57. ***Article VIII.***—The bishops of the several Jurisdictional and Central Conferences shall preside in the sessions of their respective conferences.

¶ 58. ***Article IX.***—In each Annual Conference there shall be one or more district superintendents who shall assist the bishop in the administration of the Annual Conference and shall have such responsibilities and term of office as the General Conference may determine.

¶ 59. ***Article X.***—The bishops shall appoint, after consultation with the district superintendents, ministers to the charges, and they shall have such responsibilities and authorities as the General Conference shall prescribe.

DIVISION FOUR—THE JUDICIARY

¶ 60. ***Article I.***—There shall be a Judicial Council. The General Conference shall determine the number and qualifications of its members, their terms of office, and the method of election and the filling of vacancies.

¶ 61. ***Article II.***—The Judicial Council shall have authority:

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[41] *See* Judicial Council Decision 33.

1. To determine the constitutionality of any act of the General Conference upon an appeal of a majority of the Council of Bishops or one fifth of the members of the General Conference, and to determine the constitutionality of any act of a Jurisdictional or Central Conference upon an appeal of a majority of the bishops of that Jurisdictional or Central Conference or upon the appeal of one fifth of the members of that Jurisdictional or Central Conference.

2. To hear and determine any appeal from a bishop's decision on a question of law made in the Annual Conference when said appeal has been made by one fifth of that conference present and voting.

3. To pass upon decisions of law made by bishops in Annual Conferences.

4. To hear and determine the legality of any action taken therein by any General Conference board or Jurisdictional or Central Conference board or body, upon appeal by one third of the members thereof, or upon request of the Council of Bishops or a majority of the bishops of a Jurisdictional or a Central Conference.

5. To have such other duties and powers as may be conferred upon it by the General Conference.

6. To provide its own methods of organization and procedure.

¶ 62. *Article III.*—All decisions of the Judicial Council shall be final. When the Judicial Council shall declare unconstitutional any act of the General Conference then in session, that decision shall be reported back to that General Conference immediately.

¶ 63. *Article IV.*—The General Conference shall establish for the Church a judicial system which shall guarantee to our ministers a right to trial by a committee and an appeal and to our members a right to trial before the church, or by a committee, and an appeal.

DIVISION FIVE—AMENDMENTS

¶ 64. *Article I.*—Amendments to the Constitution shall be made upon a two-thirds majority of the General Conference present and voting and a two-thirds affirmative vote of the aggregate number of members of the several Annual Conferences present and voting, except in the case of the first, second, and seventh Restrictive Rules

which shall require a three-fourths majority of all the members of the Annual Conferences present and voting. The vote, after being completed, shall be canvassed by the Council of Bishops, and the amendment voted upon shall become effective upon their announcement of its having received the required majority.[42]

¶ 65. ***Article II.***—Amendments to the Constitution may originate in either the General Conference or the Annual Conferences.

¶ 66. ***Article III.***—A Jurisdictional Conference may by a majority vote propose changes in the Constitution of the Church, and such proposed changes shall be submitted to the next General Conference. If the General Conference adopts the measure by a two-thirds vote, it shall be submitted to the Annual Conferences according to the provision for amendments.

¶ 67. Amendments

Amendment I [Adopted, 1968]

Amend Division Two, Section II, Article I (¶ 12), by deleting the entire paragraph and substituting the following as new paragraph 12:

Article I.—1. The General Conference shall be composed of not less than 600 nor more than 1,000 delegates, one half of whom shall be ministers and one half lay members.

2. Delegates shall be elected by the Annual Conferences except that delegates may be elected by other autonomous Methodist churches if and when the General Conference shall approve concordats with such other autonomous Methodist churches for the mutual election and seating of delegates in each other's highest legislative conferences.

3. In the case of The Methodist Church in Great Britain, mother church of Methodism, upon mutual approval of the concordat now pending, provision shall be made for the reciprocal election and seating of four delegates, two clergy and two lay.

Amendment II [Adopted, 1968]

Amend Division Two, Section VII, Article I (¶ 36), by adding at the end of the first sentence the words AND THE PRESIDENT OF THE

[42] *See* Judicial Council Decisions 154, 243, 244, 349.

however, that no candidates shall be continued on probation beyond the eighth regular conference session following their admission to probationary membership.

¶ 330. *General Provisions.*—1. An Annual Conference may designate a Bachelor of Divinity or equivalent first professional degree from a school of theology accredited or approved by the University Senate as the minimum educational requirement for probationary membership.

2. The Board of the Ministry shall require a transcript of credits from each applicant before recognizing any of the applicant's educational claims. In case of doubt, the board may submit a transcript to the Division of the Ordained Ministry for evaluation.

3. When probationary members find it necessary to discontinue their theological education, the Board of the Ministry shall review their relation to the Annual Conference. If they desire to continue in the ministry, they shall receive credit in the course of study for their theological work as the Division of the Ordained Ministry shall determine.

4. Probationary members who are regularly appointed to a pastoral charge are subject to the provisions of the Discipline in the performance of their pastoral duties.

5. Probationary members in a special appointment shall relate themselves to the district superintendent in the area where their work is done. The district superintendent shall give them supervision and report annually to their Board of the Ministry.

6. Probationary members received under the provisions of ¶ 328.2 who are pursuing advanced studies in the course of study shall do so in a school for courses of study; *provided,* however, that in a case of emergency or unusual circumstances, on approval by the Board of the Ministry, they may be authorized to pursue no more than one year of the course by correspondence.

7. The educational standards and other requirements for admission and ordination shall be set by the Jurisdictional Conferences for the bilingual Annual and Provisional Annual Conferences and Indian Mission within their territories, by the Central and Provisional Central Conferences for the Annual and Provisional Annual Conferences with-

in their territories, and outside such territories by the Annual or Provisional Annual Conference itself.[10]

¶ 331. *Member in Full Connection.*—**Members in full connection** with an Annual Conference by virtue of their election and ordination are bound in special covenant with all the ordained ministers of the Annual Conference. In the keeping of this covenant they perform the ministerial duties and maintain the ministerial standards established by those in the covenant. They offer themselves without reserve to be appointed and to serve as their superiors in office may direct. They live with their fellow ministers in mutual trust and concern and seek with them the sanctification of the fellowship. Only those shall be elected to full membership who are of unquestionable moral character and genuine piety, sound in the fundamental doctrines of Christianity and faithful in the discharge of their duties.

¶ 332. Members in full connection shall have the right to vote on all matters in the Annual Conference except in the election of lay delegates to the General and Jurisdictional Conferences (¶¶ 601.3, 613.3) and shall have sole responsibility for all matters of ordination, character, and conference relations of ministers. They shall be eligible to hold office in the Annual Conference and to be elected delegates to the General and Jurisdictional Conferences under the provision of the Constitution (¶ 39, Art. IV). Every effective member in full connection who is in good standing in an Annual Conference shall receive an annual appointment by the bishop.

¶ 333. Candidates who have been probationary members for at least two years may be admitted into membership in full connection in an Annual Conference by vote of the ministerial members in full connection, on recommendation of the Board of the Ministry,[11] after they have qualified as follows. They shall have (1) served full-time under episcopal appointment under the supervision of a district superintendent satisfactorily to the Board of the Ministry in one of the positions specified in ¶ 391.1-.6 for one year following the completions of the educational requirements specified in § 3 below; (2) been previously ordained deacons; (3) met educational requirements (including a minimum of two semester or quarter hours in each of the

[10] *See* Judicial Council Decision 187.

[11] *See* Judicial Council Decisions 157, 344.

fields of United Methodist history, doctrine, and polity; *provided* that a candidate may meet the requirement by undertaking a special course of study and/or examination in these fields provided and administered by the Division of the Ordained Ministry; see ¶¶ 376.2, 1226.2, 1227, 1232) in either of the following ways: (*a*) graduation with a Bachelor of Divinity or equivalent degree from a school of theology accredited or approved by the University Senate or (*b*) graduation with a Bachelor of Arts or equivalent degree from a college or university approved by the University Senate and completion of two years of advanced study beyond the requirements for probationary membership (¶ 328.2*d*) under the supervision of the Division of the Ordained Ministry in an approved course of study school; (4) satisfied the board regarding physical, mental, and emotional health; (5) prepared at least one written sermon on a specified biblical passage and responded to a written or oral doctrinal examination administered by the Board of the Ministry. The candidate's reflections and the board's response should be informed by the insights and guidelines of Part II of the Discipline of The United Methodist Church. The following questions are guidelines for the preparation of the examination:

a) What biblical, theological, historical, and experiential evidence would you advance for the belief in one God, the Father Almighty, Maker and Sustainer of all creation?

b) Discuss the Bible as the primary source and norm for belief and practice and indicate how you would relate this to tradition, Christian experience, and reason.

c) Define the Christian understanding of man and of his need for divine grace.

d) How would you interpret the statement: "Jesus Christ is Savior and Lord"?

e) What is your conception of the mission of the Holy Spirit in personal salvation, in the community of faith, and in responsible living in the world?

f) How do you understand the following: (1) repentance, (2) justification, (3) faith, (4) regeneration, (5) sanctification?

g) Describe the nature and function of the Church.

h) What is the significance of the Sacraments, Baptism and the Lord's Supper?

i) What is your basis for the belief in the life after death and what is your understanding of it?

j) What do you understand by "evangelism"?

k) In the light of the Judeo-Christian heritage and the contemporary situation, discuss the place of social action in the program of the Church.

l) How do you understand yourself, your motives, your role, and your commitment as a minister?

m) From the perspectives of Scripture, reason, and tradition, give your understanding of the meaning of ordination.

¶ 334. ***Examination for Admission into Full Connection and Associate Membership.***—The bishop as chief pastor shall engage those seeking to be admitted in serious self-searching and prayer to prepare them for their examination before the conference. At the time of the examination the bishop shall also explain to the conference the historic nature of the following questions and seek to interpret their spirit and intent. The questions are these and any others which may be thought necessary:

1. Have you faith in Christ?
2. Are you going on to perfection?
3. Do you expect to be made perfect in love in this life?
4. Are you earnestly striving after it?
5. Are you resolved to devote yourself wholly to God and his work?
6. Do you know the General Rules of our Church?
7. Will you keep them?
8. Have you studied the doctrines of The United Methodist Church?
9. After full examination do you believe that our doctrines are in harmony with the Holy Scriptures?
10. Will you preach and maintain them?
11. Have you studied our form of church discipline and polity?
12. Do you approve our church government and policy?
13. Will you support and maintain them?
14. Will you diligently instruct the children in every place?
15. Will you visit from house to house?
16. Will you recommend fasting or abstinence, both by precept and example?

effective participation in the work of their Annual Conference, assuming whatever responsibilities they are qualified and requested to assume.

5. A conference member serving under special appointment shall be available and on call to administer the Sacraments of Baptism and the Lord's Supper as requested by the district superintendent of the district in which the special appointment is held.

6. A conference member, on recommendation of the conference Board of Discipleship (if any; *see* ¶¶ 1029-30), confirmed by a two-thirds vote of the Annual Conference, may be appointed a conference evangelist; *provided* that the appointee shall meet the standards set by the General Board of Discipleship and conference Board of Discipleship for conference evangelists.

7. At their request, conference members on recommendation of the Cabinet, confirmed by a two-thirds vote of the Annual Conference, may be appointed for ministry in and to society beyond the ministries usually extended through the local church and other institutions of, or directly related to the church; *provided* that in no such case shall The United Methodist Church incur any financial responsibility.

8. Ministers who are probationary or full members may, if they so desire, receive a special appointment to attend any school, college, or theological seminary accredited or approved by the University Senate.

9. All conference secretaries shall submit to the editors of the General Minutes a list of the special appointments made in their Annual Conferences, and there shall be published in the General Minutes a representative list showing the number of ministers in the Church serving in the major categories under special appointment.

10. All effective ordained ministers of The United Methodist Church on special appointment shall hold membership in a Charge Conference of their choice within their Annual Conference. They may hold an affiliate membership without vote in a Charge Conference where they reside.

Section IX. Counseling Elder.

¶ 353. Counseling elders are members in full connection in an Annual Conference recommended by the Board of the Ministry and

assigned by the Cabinet to provide counsel for lay pastors fulfilling the requirements of the course of study, in the development of their spiritual life and growth, in the administration of the Sacraments, and in all other matters pertaining to the fulfillment of their preaching and pastoral service. Counseling elders shall work under the direction of and in consultation with the district superintendent and shall make regular reports of their activities to the district superintendent and to the Board of the Ministry.

Section X. District Superintendent.

¶ 354. *Duties of a District Superintendent.*—District superintendents are to be chosen and appointed by the bishop. They shall minister to the needs of the pastors and churches in their district by meeting and counseling with pastors and officials. Among the duties of the district superintendent are the following:

1. To travel through the district in order to preach and oversee the spiritual and temporal affairs of the Church.

2. To schedule and preside, or authorize an elder to preside, in each Charge Conference and in the Annual Church Conference.

3. To administer the program of the Church within the bounds of the district in cooperation with the pastors and the Charge Conferences, to encourage adequate salaries for pastors, to promote a concern for continuing education for ministers, and to urge financial support of all conference and denominational causes.

4. To supervise the work of pastors in the district and counsel with them concerning their pastoral responsibilities, continuing education, and other matters affecting their ministry and personal life. The district superintendent shall be available for counsel with each pastor's family.

5. To appraise the needs and opportunities of churches within the district; to evaluate fields of labor; and within an ecumenically responsible perspective to initiate new forms of ministry, mergers, yoked fields, and long-range planning and the establishment and closing of churches.

6. To counsel with pastors and committees on Pastor-Parish Rela-

tions concerning assignments and to consult with the bishop regarding the appointment of persons approved by the Board of the Ministry.

7. To emphasize ministerial recruitment and education and to advise and encourage candidates for the ministry.

8. To issue and renew licenses to preach in accordance with the action of the district Committee on the Ministry or the Board of the Ministry.

9. To cooperate with the district Committee on Church Buildings and Locations and local church Boards of Trustees or building committees in arranging acquisitions, sales, transfers, and mortgages of property and in ensuring that all charters, deeds, and other legal documents conform to the Discipline and to the laws, usages, and forms of the county, state, territory, or country within which such property is situated.

10. To participate with the other district superintendents in submitting a report to the Annual Conference reflecting the state of the conference and setting forth recommendations along with other information pertinent to the operation of the Annual Conference.

11. To see that the provisions of the Discipline are observed and to interpret and decide all questions of church law and discipline raised by the churches in the district, subject to an appeal to the president of the next Annual Conference.

12. To prepare and deliver to the succeeding district superintendent: (*a*) a list of all abandoned church properties and cemeteries within the bounds of the district; (*b*) a list of all church properties being permissively used by other religious organizations, with the names of the local trustees thereof; (*c*) a list of all known endowments, annuities, trust funds, investments, and unpaid legacies belonging to any pastoral charge or organization connected therewith in the district.

Section XI. Continuing Education.

¶ 355. Ministers shall be encouraged to continue their education throughout their careers, including a carefully developed personal program of study augmented periodically by involvement in organized educational activities. In most cases the ministers' continuing education

program should allow for leaves of absence for study at least one week each year and at least one month during one year of each quadrennium. Such leaves shall not be considered as part of the ministers' vacation and shall be planned in consultation with their charges or other agencies to which they are appointed as well as the bishop, district superintendent, and Annual Conference continuing education committee.

Section XII. Sabbatical Leave.

¶ 356. A sabbatical leave may be allowed for an approved program of study or travel. Ministers who have been serving in a full-time appointment for six consecutive years from the time of their reception into full membership, or for eight consecutive years from the time of their reception into associate membership, may be granted a sabbatical leave for one year. Whenever possible, the salary level of the last appointment served before the leave should be maintained in the appointment made at the termination of the leave. The appointment to sabbatical leave is to be made by the bishop holding the conference upon the vote of the Annual Conference after recommendation by the Board of the Ministry. Ministers shall submit a written request for a sabbatical leave including plans for study or travel to the Board of the Ministry, with copies to the bishop and district superintendent, ordinarily ninety days before the opening session of the Annual Conference. To be eligible for an additional sabbatical leave ministers shall have served six consecutive years under full-time appointment following the previous sabbatical leave.

Section XIII. Disability Leave.

¶ 357. 1. When ministers who are associate members, probationary members, or members in full connection in an Annual Conference are forced to give up their ministerial work because of their physical or mental disability, upon joint recommendation of the Board of the Ministry and the conference Board of Pensions and by a majority vote of the ministerial members of the Annual Conference in full connection who are present and voting, they may be granted annual disability leave without losing their relationship to the Annual Conference; *pro-*

vided, however, that such leave may be granted or renewed only after a thorough investigation of the case and examination of medical evidence in accordance with § 3 or § 4 below, up to but not beyond their attainment of the age of voluntary retirement. Each disability leave granted by the Annual Conference shall be recorded in the conference minutes.

2. When ministers are forced to give up their ministerial work between sessions of the Annual Conference on account of physical or mental disability, with the approval of a majority of the district superintendents, after consultation with the officers of the Board of the Ministry and the executive committee of the conference Board of Pensions, a disability leave may be granted by the bishop for the remainder of the conference year; *provided,* however, that such leave may be granted only after examination of medical evidence in accordance with § 3 or § 4 below. Any such leave granted between sessions of the Annual Conference, with the effective date of such leave, shall be entered in the minutes of the next regular session of the conference.

3. Ministers who are currently participating members of the Ministers Reserve Pension Fund at the time a disability occurs may be granted a disability leave only after medical evidence shall have been secured and reviewed by the General Board of Pensions in accordance with the regulations of the Ministers Reserve Pension Fund pertaining to disability benefits.

4. Ministers who are not currently participating members of the Ministers Reserve Pension Fund at the time a disability occurs may be granted a disability leave only after a medical report shall have been submitted to the Joint Committee on Disability (¶ 665.25) by a medical doctor who has been approved by the joint committee. Such report shall be made on a form approved by the General Board of Pensions.

5. When ministers on disability leave recover sufficiently to resume ministerial work, with their consent they may receive an appointment from a bishop between sessions of the Annual Conference, thereby terminating the disability leave. Such appointment shall be reported immediately by the Cabinet to the conference Board of Pensions and to the General Board of Pensions. Such termination of leave, together

with the effective date, shall also be recorded in the minutes of the Annual Conference at its next regular session.

Section XIV. Supernumerary Ministers.

¶ 358. Supernumerary ministers are those who are granted this relationship because of impaired health or who for other equally sufficient reason are temporarily unwilling or unable to perform the full work of their appointment. This relation is to be requested through the Board of the Ministry and granted or renewed by the Annual Conference upon the board's recommendation.[18] Between sessions of the Annual Conference this relation may be granted with the approval of the bishop, district superintendents, and the Board of the Ministry. This interim action shall be subject to the approval of the Annual Conference at its next session. This relation shall not be granted for more than five years in succession except by a two-thirds vote of the conference and must be approved annually. After consultation with the pastor, supernumerary ministers shall designate the Charge Conference in which they shall hold membership. The exercise of their ministry shall be limited to the Charge Conference in which their membership is held and under the supervision of the pastor in charge, to whom they shall report all marriages performed, baptisms administered, and funerals conducted, and shall be held amenable for their conduct and the continuation of their ordination rights to the Annual Conference. Should they reside outside the bounds of the Annual Conference, they shall forward to it annually a certificate similar to that required of a retired minister, and, in case of failure to do so, the Annual Conference may locate them without their consent. They shall have no claim on the conference funds except by vote of the conference. They shall not be eligible for membership on conference committees, commissions, or boards. They shall not receive pension credit and shall not be eligible to receive pension payments while in this relation.

Section XV. Superannuated Ministers.

¶ 359. Superannuated ministers are those who, at their own re-

[18] *See* Judicial Council Decision '05.

and the College of Bishops involved. The bishop shall continue to receive the regular stipend.

¶ 387. A bishop who has served for not less than two quadrenniums may be granted a sabbatical leave for not more than one year for a justifiable reason other than health if the request is made and if that bishop's College of Bishops, the Committee on Episcopacy of that jurisdiction, and the Council of Bishops or its executive committee approve. In this event the bishop shall, for the period for which the leave is granted, be released from the presidential responsibilities within the episcopal area, and another bishop or bishops, active or retired and not necessarily from the same jurisdiction, shall be designated by the Council of Bishops, on recommendation of the College of Bishops of the jurisdiction involved, to assume the presidential duties during the interim. The bishop shall continue to receive housing allowance and one-half salary for the period of the leave.

¶ 388. The Council of Bishops shall promote the evangelistic activities of the Church and shall furnish such inspirational leadership as the need and opportunity may demand.

¶ 389. The Council of Bishops, with the cooperation of the Division of the Ordained Ministry, may plan for annual regional seminars for the orientation and instruction of ministers newly appointed to the district superintendency.

¶ 390. *Duties, Powers, and Limitations of Bishops.*—The duties of a bishop are:

1. To oversee the spiritual and temporal affairs of the Church.

2. To preside in the General, Jurisdictional, Central, and Annual Conferences.

3. To form the districts after consultation with the district superintendents and after the number of the same has been determined by vote of the Annual Conference.

4. To fix the appointments of the preachers in the Annual Conferences, Provisional Annual Conferences, and Missions, as the Discipline may direct. The bishop may appoint an associate pastor for a charge when such an appointment is judged necessary.

5. To read the appointments of deaconesses.

6. To fix, either within their own conference or within the con-

ference where they attend school, the Charge Conference membership of all ministers who are appointed to attend school.

7. To transfer, with the consent of the bishop or bishops involved, ministerial members of one Annual Conference to another, *provided* the ministerial members and the Annual Conferences agree to said transfer; and to send immediately to the secretaries of both conferences involved, to the conference Boards of the Ministry, and to the clearinghouse of the General Board of Pensions, written notices of the transfer of members and of their standing in the course of study if they are undergraduates.[22]

8. To organize such Missions as shall have been authorized by the General Conference.

9. To consecrate bishops, to ordain elders and deacons, to consecrate deaconesses, and to see that the names of the persons ordained and consecrated be entered on the journals of the conference and that proper credentials be furnished to these persons.

10. To travel through the connection at large. (*See* ¶ 861.)

¶ 391. The following provisions and limitations shall be observed by the bishop when fixing the appointments:

1. The bishop shall appoint preachers to pastoral charges annually after consultation with the district superintendents; the bishop shall provide for consultation with the Pastor-Parish Relations committee or its representative; *provided* that, before the official declaration of the assignments of the preachers, the appointments shall be announced openly to the Cabinet, and *provided* further that before any announcement of appointments is made, the district superintendents shall consult with the pastors and the local Pastor-Parish Relations committees or their chairpersons concerning their specific appointments except when the pastors involved have left the seat of the Annual Conference without the permission of the Annual Conference.[23] Bearing in mind the stated goals of an inclusive Church, the bishop shall seek the cooperation of the Cabinet and congregations in the appointment of pastors without regard to race or color.

2. The bishop may make or change the appointments of preachers in the interval between sessions of the Annual Conference as necessity

[22] *See* Judicial Council Decisions 114, 254.

[23] *See* Judicial Council Decision 101.

may require, after consultation with the district superintendents and they in turn consulting both the pastor and the Pastor-Parish Relations committee.

3. The bishop shall choose and appoint the district superintendents annually, but within the Jurisdictional Conferences of the United States no minister shall be appointed a district superintendent for more than six years in any consecutive nine years.

4. The years served by a district superintendent in a Methodist Annual Conference or by a conference superintendent in an Evangelical United Brethren Annual Conference immediately prior to union shall in the first appointment under The United Methodist Church be counted as part of the six-year maximum, except that in the case of a conference superintendent of The Evangelical United Brethren Church no more than a maximum of three years' service prior to the minister's coming to membership in an Annual Conference employing the appointive system shall be counted.

5. On the request in each case of an appropriate United Methdist official, agency, or institution, and after consultation with the district superintendents, the bishop may make appointments annually to positions in or through United Methodist and United Methodist-related agencies.[24]

6. On the request in each case of an appropriate official, judicatory, agency, or institution, and on the recommendation of the district superintendents, confirmed by a two-thirds vote of the Annual Conference, the bishop may make appointments annually to positions in non-United Methodist Churches or agencies; *provided* that in no such case shall The United Methodist Church incur any financial responsibility.[25]

7. On the recommendation of the conference Board of Discipleship (if any; *see* ¶¶ 1029-30), confirmed by a two-thirds vote of the Annual Conference, the bishop may appoint an effective member of the conference as conference evangelist; *provided* that the appointee shall meet the standards set by the General Board of Discipleship and conference Board of Discipleship for conference evangelists.

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[24] *See* Judicial Council Decisions 166, 167.

[25] *See* Judicial Council Decisions 321, 325, 329.

8. The bishop may appoint a member of an Annual Conference who desires to attend school to any college or school of theology accredited or approved by the University Senate.

9. The bishop shall not appoint any preacher who has been rejected as an applicant or who has been discontinued or located, except at the preacher's own request, unless the conference at the time of such rejection, discontinuance, or location shall give such liberty; the bishop shall not appoint as supply pastors any preachers who have previously been expelled from the ministry or who have surrendered their credentials to an Annual Conference unless the conference to which they surrendered their credentials or from which they were expelled restores the credentials or recommends it.

10. Every traveling preacher, unless retired, supernumerary, on sabbatical leave, on disability leave, or under arrest of character, must receive an appointment.

¶ 392. Appointees to such appointments as referred to in ¶ 352.7 may neither be required to accept nor are they guaranteed appointment, and may be returned to a regular appointment only by agreement of the bishop and Cabinet.

¶ 393. When a bishop judges it necessary, a circuit, station, or mission may be divided into two or more charges and the pastors appointed thereto; and two or more circuits or stations may be united and one pastor appointed for the united congregations

¶ 394. Bishops shall discharge such other duties as the Discipline may direct.

¶ 395. *Retired Bishops.*—1. If a bishop cease from traveling at large among the people without the consent of the Jurisdictional Conference, that bishop shall not thereafter exercise in any degree the episcopal office in The United Methodist Church.

2. A bishop may voluntarily resign from the episcopacy at any session of the Jurisdictional Conference. A bishop so resigning shall surrender consecration papers to the secretary of the Jurisdictional Conference and shall be furnished with a certificate of resignation which shall entitle the bishop to membership as a traveling elder in the Annual Conference in which membership was last held or its successor. When the bishop or surviving spouse and dependent children become conference claimants, the Episcopal Fund shall pay a pension

petition within fifteen days after such direction by the secretary of the Judicial Council. In like manner any interested party may, on the party's own motion, intervene and answer, plead, or interplead.

¶ 1516. The decisions of the Judicial Council of The Methodist Church, heretofore issued, shall have the same authority in The United Methodist Church as they had in The Methodist Church, persuasive as precedents except where their basis has been changed by the terms of the Plan of Union or other revisions of church law.

¶ 1517. The Judicial Council shall have other duties and powers as may be conferred upon it by the General Conference.

¶ 1518. All decisions of the Judicial Council shall be final. However, when the Judicial Council shall declare any act of the General Conference unconstitutional, that decision shall be reported back to that General Conference immediately.

¶ 1519. The decisions of the Judicial Council on questions of law, with a summary of the facts of the opinion, shall be filed with the secretary of the General Conference and shall be published in the following manner:

1. Within ninety days following each session of the Judicial Council, the digest of decisions of the Judicial Council shall be published in *The Interpreter* or its successor publication.

2. The decisions of the Judicial Council rendered during each year shall be published in the General Minutes.

Section II. Trials.

¶ 1520. Church trials are to be regarded as an expedient of last resort. Only after every reasonable effort has been made to correct any wrong and adjust any existing difficulty should steps be taken to institute a trial. No such trial as herein provided shall be construed to deprive the accused of his legal civil rights.

All trials should be conducted in a consistent Christian manner by a properly constituted court, after due investigation. The administration of oaths shall not be required.

¶ 1521. *Offenses.*—1. A bishop, ministerial member of an Annual Conference (¶ 315) or lay pastor (ordained or unordained) (¶ 307.3)

shall be liable to accusation and trial upon any one or more of the following charges:

a) Immorality, crime, or other imprudent and unchristian conduct.

b) Habitual neglect of duties as a member or officer in the Church.

c) Disobedience to the order and discipline of The United Methodist Church.

d) Disseminating doctrines contrary to the established standards of doctrine of the Church.

e) Unministerial conduct or maladministration in office.

2. A lay member of the Church shall be liable to accusations and trial upon any one or more of the charges set forth in §§ *a*, *b*, *c*, and *d* above.

¶ 1522. *Limitations.*—No charge shall be entertained for any alleged offense which shall not have been committed within two years immediately preceding the filing of the complaint except where there is a conviction in a criminal court, and in such cases the charges shall not be entertained unless they are filed within one year after the entry of final judgment in that case.

¶ 1523. *Charges.*—1. A charge shall not allege more than one offense, several charges against the same person, however, with the specificiations under each of them, may be presented at one and the same time and may be tried together. When several charges are tried at the same time, a vote on each specification and charge must be separately taken.

2. Amendments may be made to a bill of charges at the discretion of the presiding officer; *provided* that they relate to the form of statement only and do not change the nature of the alleged offense and do not introduce new matter of which the accused has not had due notice.

3. Charges and specifications for all trials shall define the offense by its generic term as set forth in ¶ 1521 and shall state in substance the facts upon which said charges are based.

¶ 1524. *Counsel.*—1. In all cases an accused person shall be entitled to appear and be represented by counsel, a ministerial member of The United Methodist Church if the accused is a bishop or an elder and either a lay or ministerial member of the said Church if the

of the Central Conference the bishop shall notify the secretary of the Central Conference in writing of the intention to appeal, unless such decision shall be rendered within thirty days prior to the meeting of such conference, in which case notice shall be given within ten days after the conviction.

3. It shall be the duty of the secretary of the Jurisdictional or the Central Conference, on receiving notice of such appeal, to notify the secretary of the Judicial Council, and the council shall fix the time and place for the hearing of the appeal and shall give due notice of the same to the appellant and to the secretary of the Jurisdictional or Central Conference, who in turn shall notify the counsel for the Church.

¶ 1531. ***Appeal of a Ministerial Member of an Annual Conference.***—1. Each Jurisdictional Conference, upon nomination of the College of Bishops, shall elect a **Court of Appeals,** composed of nine itinerant elders, who have been at least six years successively members of The United Methodist Church or of one of the churches forming the union, and an equal number of alternates. This court shall serve until its successors have been confirmed. This court shall have full power to hear and determine appeals of ministerial members taken from any Annual Conference within the jurisdiction. The court shall elect its own president and secretary and shall adopt its own rules of procedure, and its decisions shall be final, except that an appeal may be taken to the Judicial Council upon questions of law. (*See* ¶ 1529.9.)

2. In case of conviction in a Trial Court a ministerial member shall have the right of appeal to the jurisdictional Court of Appeals as above constituted; *provided* that within thirty days after the conviction the ministerial member shall notify the president of the conference in writing of the intention to appeal.

3. When notice of an appeal has been given to the president of the Trial Court, the president shall give notice of the same to the secretary of the Court of Appeals of the Jurisdictional Conference and submit the documents in the case. The Jurisdictional Conference Court of Appeals shall give notice to the president of the conference from which the appeal is taken and to the appellant of the time and place where the appeal will be heard. Both the Annual Conference and the

appellant may be represented by counsel. The president of the conference shall appoint counsel for the Church.

4. The Court of Appeals of the Jurisdictional Conference when acting as a Court of Appeals shall determine two questions only:

a) Does the weight of the evidence sustain the charge or charges?

b) Were there such errors of law as to vitiate the verdict?

These questions shall be determined by the records of the trial and the argument of counsel for the Church and for the accused. The court shall in no case hear witnesses.

5. All necessary traveling and sustenance expense incurred by the Court of Appeals, the counsel for the Church, and the counsel for the defendant, in the hearing of an appeal case coming from an Annual Conference and appearing before any jurisdictional Court of Appeals, shall be paid out of the administration fund of the Jurisdictional Conference in which the proceedings arise.

¶ 1532. *Appeal of a Lay Pastor.*—1. In case of conviction a lay pastor shall be allowed to appeal to the Annual Conference; *provided* that within thirty days after conviction the lay pastor shall signify in writing to the superintendent of the district the determination to appeal.

2. An appeal by a lay pastor from a Charge Conference within the jurisdiction of a Mission shall be to the annual meeting of the said Mission.

¶ 1533. *Appeal of a Church Member.*—1. The Charge Conference of each charge shall elect from among the members of the Church a person of sound judgment and experience in the affairs of the Church as a trier of appeals for members.

2. Any member of the Church against whom judgment shall have been rendered by a Trial Court may appeal to the Court of Appeals, as hereinafter constituted, by giving written notice of appeal to the district superintendent within thirty days after judgment is rendered.

3. When thirty days' notice of appeal shall have been given, or sooner if agreed upon, the superintendent, having due regard for the wishes and rights of the appellant, shall convene a Court of Appeals. It shall be constituted of not fewer than seven nor more than nine triers of appeals in the district, but the trier of appeals of the charge to which the accused member belongs shall not be summoned. The

¶ 1537. When a lay pastor is deprived of credentials of ordination by expulsion or otherwise, the district superintendent shall require them and shall file them with the Annual Conference in the bounds of which the lay pastor resides.

¶ 1538. Should a lay pastor later produce to the Annual Conference a recommendation from the District or Charge Conference for the restoration of the surrendered credentials, signed by its president and secretary, they may be restored to the lay pastor.

¶ 1539. *Investigation and Trial of a Bishop.*—1. A bishop is amenable for conduct to the Jurisdictional or Central Conference in which that bishop has residential or presidential supervision, or to the Jurisdictional or Central Conference to which that bishop is related.

2. If a bishop shall be accused in writing of any of the offenses hereinbefore mentioned (¶ 1521) in the interval between sessions of the Jurisdictional Conference, the district superintendent within whose district the offense is said to have been committed shall call the Committee of Investigation of that Annual Conference, who shall carefully inquire into the case, and if in the judgment of the majority of them there is reasonable ground for such accusation, they shall prepare and sign the proper charges and specifications and send a copy of the same to the accused and to the president of the College of Bishops of the jurisdiction in which the offense took place. The said president shall call together at some convenient place, in not less than ten nor more than fifteen days from the time the charges are received, nine ministers in full connection of the said jurisdiction and also the witnesses by whom the accusation is expected to be proved. The said president or some other bishop of the jurisdiction appointed by the president shall preside at the investigation. If possible, the accused shall have the right to make a statement in self-defense and to interrogate witnesses, but shall not be allowed to present any. If six or more of these ministers in full connection determine that a trial is justified, they shall order one, and the College of Bishops may suspend the bishop pending trial as hereinafter provided.

3. In case a trial is ordered, the president of the College of Bishops of the said jurisdiction shall within seven days from the date on which a trial is ordered fix the time and place of it, which shall be in

not less than thirty nor more than sixty days from the date of such order. The Trial Court shall be constituted as follows:

a) The president of the College of Bishops shall arrange for a meeting of the accused bishop and counsel and the counsel for the Church as early as practicable after the trial is ordered to select the members of the Trial Court.

b) The president shall nominate as proposed members of the Trial Court thirteen ministerial members in full connection from a list made up of the Committees of Investigation of not fewer than four Annual Conferences within the jurisdiction.

c) The Church and the accused each shall have the right of peremptory challenge to the number of four and of unlimited challenge for cause.

d) For each name stricken from this list of thirteen through the exercise of the right of challenge, the president of the College of Bishops shall add another from the eligible group until the required number of thirteen is thus selected. If necessary to complete the panel, nominations may be made from other ministerial members in full connection in the jurisdiction.

e) By a continuation of this same process, four alternates shall be chosen, who shall be called in the order of their election to serve.

f) Should the accused be the president of the College of Bishops of the jurisdiction, then a copy of such charges and specifications shall be sent to the secretary of the College of Bishops of that jurisdiction, who shall perform the duties hereinabove prescribed for the president or designate another bishop of the same jurisdiction.

4. The court as thus constituted shall have full power to try the accused and by a vote of nine or more to suspend the accused from the exercise of the functions of office, to depose the accused from office or the ministry or both, to expel the accused from the Church, or in case of minor offenses to fix a lesser penalty. Its findings shall be final, subject to appeal to the Judicial Council as hereinafter provided, and shall be reported to the Jurisdictional Conference for entry on its journal. The records of the trial, including the testimony, shall be signed by the president and secretary of the Trial Court and shall be placed in the custody of the secretary of the Jurisdictional Con-

ference, together with all the documents in the case, for preservation with the papers of the Jurisdictional Conference, and shall be the basis of any appeal which may be taken.

5. An accusation preferred during the session of a Jurisdictional Conference shall be made directly to the Committee on Episcopacy, which shall investigate the charge and if it considers a trial necessary, shall report to the Jurisdictional Conference. If the Committee on Episcopacy should decide a trial necessary, it shall formulate charges and specifications, conforming them to the grade of offense involved in the accusation, and it shall appoint one or more of its members to prosecute the case. The bill of charges and specifications shall be a part of the report of the committee to the Jurisdictional Conference.

6. Every case to be tried under the process stated in § 5 above shall be referred to a Trial Court, which shall consist of thirteen ministerial members in full connection and a presiding officer, all of whom shall be appointed by the president in the chair or in such manner as the conference may determined. The Church and the accused each shall have, in addition to the right of unlimited challenge for cause, the right of peremptory challenge to the number of four. The court as thus constituted shall have full power to try the accused and by a two-thirds vote to suspend the accused from office, to depose the accused from office or the ministry or both, to expel the accused from the Church, or in the case of minor offenses to fix a lesser penalty. The court's findings shall be final, subject to appeal to the Judicial Council as hereinafter provided.

7. A bishop suspended or deposed shall have no claim upon the Episcopal Fund for salary, dwelling, or any other expenses from the date of such suspension or deposition, but in case this person is thereafter found not guilty of the charge or charges for which suspended or deposed, the bishop's claim upon the Episcopal Fund for the period during which deprived of the functions of office shall be paid.

8. If an alleged offense has been committed beyond the bounds of any district, the district superintendent within the bounds of whose district the bishop resides shall proceed as hereinbefore provided.

9. The several Central Conferences shall make suitable rules for the investigation and trial of charges against bishops elected by them.

In the absence of such rules, the same procedure shall be followed as is provided for the investigation and trial of bishops in Jurisdictional Conferences; *provided,* however, that an appeal may be taken to the Judicial Council. If an accused bishop is the only bishop in a Central Conference, the Council of Bishops shall designate one of their number to conduct the trial.

¶ 1540. ***Trial of a Ministerial Member of an Annual Conference.***—1. Each Annual Conference at each session, upon nomination of the presiding bishop, shall elect five itinerant elders, persons of experience and sound judgment in the affairs of the Church, who shall be known as the **Committee of Investigation,** and five reserves chosen in like manner to serve in the absence or disqualification of the principals.

2. If a ministerial member of an Annual Conference, whether on probation or in full connection, in the interval between sessions of the conference, shall be accused of any of the offenses enumerated in ¶ 1521, the member's district superintendent (or the district superintendent of the district within the bounds of which such acts are alleged to have taken place) shall call the Committee of Investigation to inquire into the same and, if possible, bring the accused and accuser face to face. The accused shall have the right to make a statement in self-defense but shall not present any witnesses before the Committee of Investigation. The district superintendent of the accused (or such other district superintendent as shall be appointed) shall preside throughout the proceedings and shall certify the judgment of the committee to the Annual Conference.

3. If the accused is a district superintendent, the bishop in charge shall call in the superintendent of any other district who shall summon the Committee of Investigation of the Annual Conference of which the accused is a member to investigate the case, and that superintendent shall preside at the investigation.

4. If in the judgment of a majority of the Committee of Investigation there is reasonable ground for such accusation, they shall prepare and sign the proper charges and specifications and send a copy to the accused, to the bishop in charge, to the district superintendent duly appointed by the bishop in charge, and to the secretary of the Annual Conference. On recommendation of the Committee of Investi-

gation, the bishop may suspend the accused from all ministerial services pending the trial.[8]

5. The bishop in charge, or the district superintendent duly appointed by the bishop in charge, within ten days after receipt of a copy of such charges, shall appoint counsel for the Church and notify the accused in writing to appear at a fixed time and place no less than seven days after service of such notice and within a reasonable time thereafter to select the members of the Trial Court. At the appointed time, in the presence of the accused and counsel of the accused, if requested, and counsel for the Church, thirteen elders in full connection shall be selected as a Trial Court. They shall be selected from a panel of twenty-one elders in full connection of the Annual Conference of which the accused is a member, who have been nominated by the majority of the district superintendents of that conference. The counsel for the Church and the accused shall each have peremptory challenges to the number of four and challenges for cause without limit. If by reason of challenges for cause being sustained the number is reduced below thirteen, additional elders shall be nominated, in like manner as was the original panel, to take the places of the numbers challenged, who likewise shall be subject to challenge for cause. This method of procedure shall be followed until a Trial Court of thirteen members has been selected. The presiding officer in charge shall also fix the time and place for the trial, notice of which shall be given in writing to the accused by the counsel for the Church seven days in advance of the time fixed; *provided* that with the consent of the accused the time of the trial may be fixed at an earlier date. The bishop in charge shall either preside at the trial or invite another bishop or a district superintendent to do so. The presiding officer shall appoint a secretary, who shall keep a record of the proceedings and of the testimony. The court thus constituted shall have full power to try the accused and upon conviction by a vote of nine or more thereof shall have power to suspend the accused from the exercise of the functions of office, to depose the accused from office or the ministry or both, to expel the accused from the Church, or in case of conviction of minor offenses to fix a lesser penalty. Its findings shall be final,

[8] *See* Judicial Council Decision 89.

subject to appeal to the Committee on Appeals of the Jurisdictional Conference or the Central Conference, as the case may be. It shall make a faithful report in writing of all its proceedings, signed by the president and secretary of the committee, to the secretary of the Annual Conference for permanent record, and deliver to that secretary therewith the bill of charges, the evidence taken, and the decision rendered, together with all documents brought into the trial.

6. When accusation against a ministerial member is preferred during the session of an Annual Conference, it shall be referred to the Annual Conference Committee of Investigation, which committee shall report to the conference whether or not a trial is deemed necessary. The Committee of Investigation, when reporting a case for trial, shall formulate a bill of charges and specifications. The presiding bishop shall appoint some elder in full connection with the conference as counsel for the Church.

7. The conference may constitute a Trial Court of thirteen elders in full connection to try the accused in the same manner as in § 5 above. The Trial Court, in the presence of a bishop or of a chairperson whom the president of the conference shall have appointed, and one of the secretaries of the conference, shall try the case. The Trial Court thus constituted shall have full power, upon conviction of the accused by two-thirds vote thereof, to expel the accused from the ministry and membership of the Church, to depose the accused from the ministry of the Church, to suspend the accused from his office in the ministry, or in connection with a minor offense to fix a lesser penalty. Its findings shall be final, subject to appeal to the Committee on Appeals of the Jurisdictional Conference. It shall make a faithful report in writing of all its proceedings, duly signed by the president and secretary of the Trail Court, to the secretary of the Annual Conference for entry in its journal, and deliver therewith the bill of charges and specifications, the evidence taken, and the decision rendered, with all documents brought into the trial.

8. Any ministerial member residing beyond the bounds of the conference in which membership is held shall be subject to the investigation prescribed in §§ 1-5 above under the authority of the superintendent of the district within which the minister resides or is employed. The Committee of Investigation shall consist of the Committee

of Investigation of that conference. If residing or employed within the bounds of a Mission, the minister shall be subject to investigation under the authority of the superintendent of the district within which Charge Conference membership is held or of the superintendent of the Mission and the Committee of Investigation of the same. If the minister is the superintendent of the Mission, the bishop in charge shall appoint an elder in full connection to act in the case.

9. An Annual Conference may entertain and try charges against its ministerial members though no investigation of them has been held or though the investigation has not resulted in suspension.

10. In all the foregoing cases the papers, including the record, charges, evidence, and findings, shall be transmitted to the ensuing session of the Annual Conference of which the accused is a member; on which papers, and on such other evidence as may be admitted, and also upon such other charges or specifications as may be presented, due notice of the same having been given to the accused, the case shall be determined.

11. Any ministerial member who shall hold a religious service within the bounds of a pastoral charge other than that to which appointed when requested by the preacher in charge or the district superintendent not to hold such service shall be deemed guilty of disobedience to the order and discipline of the Church, and if that minister shall not refrain from such conduct, shall then be liable to investigation and trial.

12. If a ministerial member is charged with disseminating publicly or privately doctrines which are contrary to the established standards of doctrine of the Church, and the minister so offending shall solemnly promise the Committee of Investigation not to disseminate such erroneous doctrines in public or private, it may waive suspension in order that the case may be laid before the next Annual Conference, which shall determine the matter.

¶ 1541. *Withdrawal Under Complaints or Charges.*—When a bishop or a ministerial member is accused of an offense under ¶ 1521 and desires to withdraw from the Church, the Jurisdictional or Central Conference in the case of a bishop, or the Annual Conference in the case of a ministerial member, may permit withdrawal; in which case the record shall be "Withdrawn under complaints." If formal charges

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS. **SUPERIOR COURT**
CA No. 114902

William E. Alberts, Plaintiff)
) **Memorandum of Decision on**
v) **Motions for Summary**
) **Judgment**
Donald Devine, ET AL, Defendants)

The defendants, Edward G. Carroll and John E. Barclay, respectively filed Motions for Summary Judgment in the aforesaid matter. The matters of law in respect to both motions are dealt with in this memorandum.

Mass. R. Civ. P. 56(c) provides that the court may allow a motion for summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." In order to prevail, the moving party bears the burden of establishing that there is no genuine question of fact on every relevant issue raised by the pleadings. *Attorney General* v *Baily,* 386 Mass. 367, 371 (1982); *Kesler* v *Pritchard*, 362 Mass. 132, 134 (1972); *Hub Associates, Inc.* v *Goode,* 357 Mass. 449, 451 (1970).

In short summary, the plaintiff alleges in his complaint that defendants Barclay and Carroll induced the defendant Devine to breach plaintiff's trust and disclose to them his psychological diagnosis, condition, behavior or treatment. The complaint further alleges that defendants Barclay and Carroll conveyed "their opinions of plaintiff's mental health" to members of the Southern New England Conference and various boards, committees and subcommittees of the Conference concerned with the appointment of ministers, as well to members of the public. As a result of defendants' disclosures, plaintiff claims that he was not reappointed as the Minister to the Old West Church, thereby causing him to sustain economic loss.

After a full review of the affidavits[1] and other relevant documents submitted by the parties, the court finds that there is no genuine issue of material fact. Defendant Barclay admits that he consulted with defendant Devine "for guidance as how best to assist the plaintiff in his private and church life." He also admits that he advised defendant Carroll, who presided over the Board of Ministry at the Annual Conference, of plaintiff's status. The Board of Ministry subsequently voted to retire plaintiff from the ministry.

The issue that the plaintiff attempts to assert relative to the conduct of defendants Barclay and Carroll is whether the information disclosed by defendant Devine was used in such a manner so as to wrongfully deprive him of his ministry post. On its face, this issue appears to be one of fact. In the context of a church dispute, however, the threshold issue is whether judicial inquiry into the factual question raised by the plaintiff is foreclosed by the First and Fourteenth Amendments. This threshold matter raises an issue of law and is therefore appropriately a matter for summary judgment. *Attorney General* v *Bailey,* 386 Mass. 367 (1982); *Commonwealth* v *Colonial Motor Sales, Inc.*, (1981) Mass. App. Ct. Adv. Sh. 937.

When presented with a motion for summary judgment in a case involving a church dispute, the court must address the following three issues: whether the United Methodist Church is hierarchical, whether the church maintains a tribunal for the resolution of controversies of this nature, and whether the plaintiff asserts his claim as a member of that church. *Wheeler* v *Roman Catholic Archdiocese of Boston,* 378 Mass. 58, 62 (1979) cert. den. 444 U.S. 899 (1979). These three issues are factual in nature and, in this case, they are undisputed.

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[1]The affidavits of plaintiff (second affidavit) and Bishop Joseph E. Yeakel were not signed by the respective affiants. While the court could disregard such affidavits, *Danis* v *Bridge Enterprises, Inc.*, 8 Mass. App. Ct. 930, 931 (1979), there has been no objection to the admission of these affidavits by either party on this ground. Therefore, the court has considered them insofar as they are relevant to resolution of this dispute.

A hierarchial church is one in which "the religious congregation or ecclesiastical body . . . is but a subordinate member of some general church organization in which there are superior ecclesiastical tribunals with a general and ultimate power of control, more or less complete, in some supreme judicatory over the whole membership of that general organization." *Watson* v *Jones,* 13 Wall. 679, 722-723 (1871). The term 'hierarchical' is used in contradistinction to 'congregational' which has been defined as a religious congregation which, by the nature of its organization, is strictly independent of other ecclesiastical associations and, so far as church government is concerned, owes no fealty or obligation to any higher authority." *Id.*

The United Methodist Church falls within the former category. It is a hierarchical church which, in ascending order, is composed of local churches, regional districts and various levels of conferences. The highest ecclesiastical body of the church is the General Conference vested by the church Constitution with "full legislative power over all matters distinctively connectional," including but not limited to the power to define and fix the conditions, privileges, and duties of church membership; define and fix the powers and duties of Annual Conferences, Provisional Annual Conferences, Missionary Conferences and Missions, and of Central Conferences, District Conferences, Charge Conferences, and Congregational Meetings; and provide a judicial system and method of judicial procedure for the church. The basic body of the church is the Annual Conference, responsible for "all matters relating to the character and conference relations of its ministerial members." There is also a Judicial Council which may hear and determine appeals from a bishop's decision on a question of law made during the course of the Annual Conference.

The United Methodist Church also maintains a tribunal for resolution of disputes such as that presented here. According to the church's Book of Discipline, a bishop may be subject to a church trial upon a written charge of "imprudent and unchristian conduct", disobedience to the order and discipline of the church or unministerial conduct. Under the circumstances, the plaintiff had the option of pursuing a church trial if he believed that the conduct of the defendant Carroll was improper and that the improper conduct of the defendant caused him to be retired by a vote of the Board of Ministry at the Annual Conference.

Finally, plaintiff's claim is not founded upon his membership in the church. His claim for damages, however, assumes that he was entitled to be a minister in the church and that, but for defendants' alleged tortious conduct, he would have remained in that post. The relief requested is therefore predicated on his membership or lack of membership in this church.

The role of a civil court in resolving church disputes may vary, depending upon the structure of the church involved, *Antioch Temple, Inc.* v *Parekh,* Mass. Adv. Sh. (1981) 1523, 1529, as well as the nature of the dispute. Compare *Jones* v *Wolf,* 433 U.S. 595 (1979) and *Serbian Eastern Orthodox Diocese for the United States and Canada* v *Milivojevich*, 426 U.S. 696 (1976). It is uncontroverted that the church is a hierarchical organization rather than congregational. The court must now turn to the nature of the dispute in order to determine whether judicial scrutiny of defendants' actions is appropriate in this case.

Controversy concerning real property and doctrinal differences trigger most church disputes. In the former case, a state is constitutionally entitled to adopt a "neutral principles of law" analysis involving consideration of the deeds, state statutes governing the holding of church property, the local church's charter and the general church's constitution. *Jones* v *Wolf,* 443 U.S. at 602-603. See also *Maryland and Virginia Eldership of the Churches of God* v *Church of God at Sharpsburg, Inc.,* 396 U.S. 367 (1970). In the latter case, however, the Constitution mandates that civil courts accept the decisions of the highest judicatories of a religious organization of hierarchical polity on matters of discipline, faith, internal organization, ecclesiastical law, custom or rule. *Serbian Eastern Orthodox Diocese for the United States and Canada* v *Milivojevich*, 426 U.S. at 713. These matters are

"strictly and purely ecclesiastical in . . . character," *Watson* v *Jones,* 13 Wall. at 733, and it is beyond the competence and jurisdiction of civil courts to inquire into these areas. *Id.* at 729. But see *Wheeler* v *Roman Catholic Archdiocese of Boston*, 378 Mass. at 62 n. 3. As the court noted in *Moustakis* v *Hellenic Orthodox Society of Salem and Peabody,* 261 Mass. 426 (1928),

> (R)eligious freedom is the constitutional right of all citizens under our government; and . . ., if the courts deal with litigation of that nature, the whole subject of doctrinal theology, the customs, canonical laws both written and unwritten, and the fundamental organization of the various religious denominations would need to be determined with care for the purpose of reaching authoritative conclusions. Such a course by the courts would in the end deprive the denominations themselves of interpretations of their own body of church polity, and would establish the courts as the final arbiter in every religious controversy. The evils attendant upon such a practice have been thought far to outweigh the incidental advantages that might flow from its adoption.

Id. at 466.

The appointment of a minister is a canonical act and, as such, it is purely ecclesiastical. *Gonzalez* v *Roman Catholic Archbishop of Manila*, 280 U.S. 1, 16 (1929). The retirement of a minister is likewise ecclesiastical, whether the retirement occurs as a matter of discipline or of faith. Although the plaintiff has clothed the actions of the defendants Barclay and Carroll in tort, see *Moustakis* v *Hellenic Orthodox Society of Salem and Peabody,* 262 Mass. at 465, his damage flows primarily from his retirement from the ministry. "It is not the province of civil courts to enter the domain of religious denominations for the purpose of deciding controversies touching matters exclusively ecclesiastical." *Id.* at 466. The plaintiff has not alleged "fraud, collusion or arbitrariness" in the Conference's decision to retire him from his post, see *Gonzalez* v *Roman Catholic Archbishop of Manila*, 280 U.S. at 16, and even if he had, inquiry by a civil court into the circumstances of his removal may still be prohibited. *Serbian Eastern Orthodox Diocese for the United States and Canada* v *Milivojevich*, 426 U.S. at 713.

The First and Fourteenth Amendments to the Constitution allow hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters. *Id.* at 724. All who unite themselves to such an organization are bound to submit to the organization's chosen form of government. *Watson* v *Jones,* 13 Wall. at 729. The plaintiff became a minister in the United Methodist Church by choice and after undergoing the screening process as provided in the church's Book of Discipline, the plaintiff was ordained, thereby submitting himself to the doctrines, rules and authority of the church in matters involving faith, doctrine and internal organization which are insulated from judicial inquiry. The relationship of the plaintiff as an ordained minister and the governing body of the United Methodist Church cannot be analogized to an employer-employee relationship.

Whether the actions of the defendants Barclay and Carroll were improper or outside of the ambit of the governing Book of Discipline is properly the inquiry of the church tribunal and not that of a civil court. The same reasoning applies to the position as to whether or not the actions of the defendants Barclay and Carroll were justified. There exists no colorable clergy privilege in civil law to protect the actions of the defendants Barclay and Carroll. If a privilege, right or justification exists, its genesis is within the canonical framework of the doctrines of the church. In order to determine whether the defendants had such a justification due to their respective positions within the governing body of the church, a civil court would be required to interpret and apply the governing Book of Discipline and to rule upon the defendants' use or misuse of such justification. Interpretation and application of church law is insulated from the judicial inquiry of a civil court.

Even assuming, arguendo, that the plaintiff was able to establish that the actions of the defendants Barclay and Carroll constituted a 'secular tort' to the degree that liability attached, this court cannot disturb the decision to retire the plaintiff made by members of the United Methodist Church at its Annual Conference. The causal nexus of liability to damages in the form of nonappointment and retirement could not be established. The causal nexus between the allegedly tortious conduct and the harm sustained is broken.

Based upon the foregoing, the motion of Edward G. Carroll and the motion of John E. Barclay for summary judgment be and hereby are *allowed.*

By the Court,

Elizabeth J. Dolan
Associate Justice
Superior Court

Dated:_____

It is further Ordered that the Motion of defendant, John E. Barclay, for Entry of Final Judgment pursuant to Mass. R. Civ. P. 54(b) and the Motion of defendant, Edward G. Carroll, for Entry of Final Judgment pursuant to Mass. R. Civ. P. 54(b) be and hereby are *Allowed.*

Elizabeth J. Dolan

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS. **SUPERIOR COURT CIVIL ACTION NO. 114902**

WILLIAM E. ALBERTS,
PLAINTIFF

V.

DONALD T. DEVINE, ET AL,
DEFENDANTS

MOTION FOR PROTECTIVE ORDER

Defendants Carroll and Barclay hereby move the Court for a protective order protecting them from infringement upon their First Amendment rights as members of the United Methodist Church, and particularly in their roles as Bishop and District Superintendent respectively of the United Methodist Church, by:

1. Quashing any subpoena which may issue against or be served upon them in connection with a trial in this case;

2. Quashing any subpoena which may issue against or be served upon any other person who was a member of the United Methodist Church in 1972 or 1973;

3. Ordering that no testimony heretofore given by either of them by deposition and no documents heretofore identified or produced by either of them at deposition or in discovery in this case be disclosed hereafter except to counsel and their respective clients, and that no further portions of such testimony or documents shall become part of the record in this case, whether by offer or introduction at trial or by filing with the clerk or Court;

4. Ordering that no testimony given heretofore by Reverend Sam Hedrick or Reverend Oliver Drake (retired) of the United Methodist Church in deposition in this case and no documents identified or produced by either of them at deposition in this case be disclosed hereafter except to counsel and their respective clients, and that no further portions of such testimony or documents shall become part of the record in this case, whether by offer or introduction at trial or by filing with the clerk or Court;

5. Ruling inadmissible at trial any evidence relating in any way to the conduct, words and thoughts of defendants Barclay and Carroll and of any other members of the United Methodist Church in 1972 or 1973.

As grounds for this Motion, the Defendants refer the Court to their Memoranda in support of their Motions for Summary Judgment insofar as they relate to a constitutional prohibition of inquiry by the civil courts into matters of church doctrine and administration.

Defendants,

Edward G. Carroll and
John E. Barclay

By Their Attorneys,

Deborah S. Griffin
PEABODY & ARNOLD
One Beacon Street
Boston, Mass. 02108
(617) 523-2100

CONTRACT

NORFOLK COUNTY
SUPERIOR COURT
CIVIL DOCKET
LAW AND EQUITY **Docket No. 114902**

WILLIAM E. ALBERTS *vs.* **DONALD T. DEVINE ETALS**

Ad Damnun $ _____ **Date of Writ** _____

DOCKET ENTRIES

Counsel for Plaintiff	Counsel for Defendant
1975 Mar. 4 Keary, O'Laughlin, Olmstead and Hageman 1560 A. Tremont St. Box 782 Boston	1975 April 7 Jared H. Adams 50 Staniford Street Boston 02114
1982 Aug. 24 Robert J. Doyle, Doyle, Playter, Novick & Berkin	1976 Jan. 9 w/d/ 12/23/76 Reverend Bishop Edward Carroll Reverend John E. Barclay Csaplar and Bok One Winthrop Square
1983 Apr. 7 9 Hamilton Place, Boston	1976 Jan. 29 Deborah S. Griffin Peabody and Arnold One Beacon Street Boston
	1982 Oct. 25 Florence E. Freeman Freeman and Conceison 483 Boston Post Road Weston, Massachusetts

1.	1975 Mar. 4	Action entered Complaint Filed
	1975 Mar. 4	Plaintiffs Jury Claim
2.	1975 Mar. 26	Return of Service
3.	1975 Mar. 27	Request for Default
4.	1975 Mar. 27	Affidavit In Support of Request for Default—Defendant Defaulted
5.	1975 Apr. 7	Defendants' Motion to Remove Default and to Appear and Answer Late
6.	1975 May 23	Notice of Taking Deposition
7.	1975 May 23	Notice of Taking Deposition
8.	1975 May 23	Plaintiff's Motion for Leave to Make a Video Tape Recording of Deposition Testimony
9.	1975 May 27	Return of Service (Rev. Bishop Edward G. Carroll)

DOCKET ENTRIES

10.	1975 May 27	Return of Service (Rev. Dr. Sam Hedrick)
	1975 May 29	Motion to Take Video-Tape Deposition—Denied w/out Prejudice to Renewal if Bishop Carroll's Transfer is Imminent (Lynch, J.) (ns. 5/30/75)
11.	1975 Dec. 3	Plaintiff's Motion to Amend Complaint and add parties Defendants Edward Carroll and John Barclay
	1975 Dec. 8	Re: Above Motion—Allowed (Dimond, J.) Amendment is Part of Motion (Ns.)
12.	1975 Dec. 30	Return of Service (John Barclay)
13.	1976 Jan. 9	Motion to Extend time for Rev. Barclay and Bishop Carroll to Answer Amended Complaint up to and Including 1/14/76 (Assented)—Allowed (Dimond, J.) (ns. 1-9-16)
14.	1976 Jan. 16	Motion to Extend Time for Defendants Rev. Barclay and Rev. Bishop Carroll to Answer Amended Complaint to and Including 1/28/76
15.	1976 Jan. 29	Answer of Defendant and Jury Claim Edward G. Carroll and J. E. Barclay
16.	1981 Nov. 5	Notice of Taking Deposition
17.	1981 Nov. 23	Notice of Taking Deposition
18.	1981 Dec. 1	Plaintiff's Motion to Compel Discovery and for Protective Order
19.	1981 Dec. 9	Conciliator's Report
20.	1982 Feb. 8	Plaintiff's Motion for Evidentiary Hearing Re: Discovery, Order Compelling Discovery and Sanctions Under M.R.C,P Rule 37
21.	1982 Feb. 10	Defendants' Response to Request for Production of Documents
	1982 Feb. 16	Re: Plaintiff's Motion for Evidentiary Hearing Re: Discovery, Order Compelling Discovery and Sanctions R. 37—Denied w/out prejudice (Meyer, J.) (ns.)
22.	1982 Feb. 16	Plaintiff's Motion for Reconsideration and for Short Order of Notice
23.	1982 Feb. 18	Plaintiff's Motion for Evidentiary Hearing Re: Discovery Order Compelling Discovery and Sanctions
24.	1982 Feb. 19	Defendants' Motion for Award of Expenses R. 37

DOCKET ENTRIES

25.	1982 Feb. 24	Defendant Donald F. Devine's Motion for a Protective Order
26.	1982 Feb. 25	Notice of Taking Deposition
27.	1982 Mar. 4	Affidavit of Bishop G. Carroll
28.	1982 Mar. 4	Affidavit In Support of Motion for Award Expenses
29.	1982 Mar. 4	Affidavit of J. Warren Jacobs
30.	1982 Mar. 4	Affidavit of Rev. John E. Barclay
	1982 Mar. 4	Re: Defendant's Motion for Award of Expenses Under R. 37 (Barclay and Carroll)—Motion Denied (Sullivan, J.) (ns.)
	1982 Mar. 4	Plaintiff's Motion for Evidentiary Hearing Re: Discovery, Order Compelling Discovery and Sanctions under M.R.C.P 37—Motion Denied (Sullivan, J.) (ns.)
	1982 Mar. 4	Re: Defendant's Donald T. Devine's Motion for a Protective Order—Motion Allowed to the Extent that Deposition of Defendant Devine by Plaintiff shall Continue one more day on Direct Examination from 10 A.M. to 4 P.M. (w/breaks and lunch) (Sullivan, J.) (ns.)
31.	1982 Apr. 12	Defendant's D. T. Devine's Request for Request for Production of Documents under Rule 34
32.	1982 May 16	Plaintiff's Objection to Defendant D.T. Devine's Request for Production of Documents under Rule 34
33.	1982 Jun. 18	Defendant's Motion to Compel Production of Documents
	1982 Jul. 1	Re: Above Motion—Motion Denied (Dimond, J.) (ns.)
34.	1982 Sep. 9	Notice of Taking Deposition
35.	1982 Sep. 9	Plaintiff's Motion for Continuance of Trial to November Trial List
36.	1982 Sep. 15	Opposition of Defendant D. T. Devine's Motion for Continuance
	1982 Sep. 15	Plaintiff's Motion for Continuance of Trial to November List—Allowed 1st Case out in November—Parties need not appear to answer list on 9/23/82 (Rutledge, J.) (ns.)

DOCKET ENTRIES

37.	1982 Sep. 20	Notice of Taking Deposition
38.	1982 Oct. 1	Notice of Taking Deposition
39.	1982 Oct. 26	Defendant's John E. Barclay's Motion for Summary Judgment
40.	1982 Oct. 26	Affidavit of J. Barclay
41.	1982 Oct. 26	Notice of Taking Deposition
42.	1982 Oct. 27	Plaintiff's Motion to Compel Answer to Deposition Questions
43.	1982 Oct. 28	Plaintiff's Motion for Continuance of Trial
44.	1982 Nov. 1	Memorandum In Support of Defendant's Motion for Summary Judgment
45.	1982 Dec. 2	Notice of Taking Deposition
46.	1982 Dec. 23	Order Re: Special Assignment (Lynch, J.) (cs.)
47.	1982 Dec. 29	Order on Request for Special Assignment (Standing Order # 14-80) (Dolan, J.) Dated 12-21-82
48.	1983 Jan. 11	Notice of Taking Deposition
49.	1983 Jan. 13	Plaintiff's Motion to Compel Answer to Deposition Questions and for Attorney's Fees w/supporting Memo.
50.	1983 Jan. 13	Affidavit In Support of Motion
51.	1983 Jan. 13	Plaintiff's Motion for Order Compelling Defendant Carroll to Answer Deposition question and for Attorney's Fees, w/Memorandum
52.	1983 Jan. 20	Plaintiff's Motion For Order Compelling Production of Documents Pursuant to Deposition Subpoena
53.	1983 Jan. 21	Defendants' Motion to Amend Answer
54.	1983 Jan. 21	Defendants E. G. Carroll's Motion for Summary Judgment
55.	1983 Jan. 31	William E. Albert's Affidavit in Opposition to Defendant Barclay's Motion for Summary Judgment
56.	1983 Feb. 7	Defendants Barclay and Carroll's Motion to Strike Affidavit of W. E. Alberts
57.	1983 Feb. 11	Defendant Donald T. Devine's Motion to Amend Answer

DOCKET ENTRIES

58.	1983 Feb. 14	Plaintiff's Motion for Leave to Amend Complaint
59.	1983 Feb. 14	William E. Alberts' Second Affidavit In Opposition to Barclay's Motion for Summary Judgment
60.	1983 Feb. 15	Memorandum In Support of Defendant's Motion for Summary Judgment
61.	1983 Feb. 14	Defendants Carroll and Barclay's Motion in Limine
62.	1983 Feb. 16	Affidavit of Bishop Joseph H. Yeakel In Support of Motion for Summary Judgment
63.	1983 Feb. 23	Third Affidavit of William E. Albert's In Opposition to Motion for Summary Judgment
64.	1983 Feb. 25	Defendants' Motion for Entry of Final Judgment (54b)
65.	1983 Feb. 25	Plaintiff's Amended Motion to Amend Complaint
66.	1983 Mar. 4	Plaintiff's Motion In Limine, or Alternatively for a Report to Appeal Court or Supreme Judicial Court
67.	1983 Mar. 8	Defendant's Motion to Dismiss (Donald Devine)
68.	1983 Mar. 8	Defendant's Memorandum In Support
69.	1983 Mar. 8	Defendant's D. Devine's Motion for Summary Judgment
70.	1983 Mar. 8	Defendant's Memorandum In Support
71.	1983 Nov. 22	Defendant's Motion for Protective Order—Allwed Pending Report of Issues of Law (Dolan, J.) dated 11-15-83 (ns. 11-22-83)
72.	1983 Nov. 22	Memorandum of Decision on Motion of Defendant Devine for Summary Judgment (Dolan, J.) dated 11-15-83 (cs. 11-15-83)
73.	1983 Nov. 22	Memorandum of Decision on Defendant's Motion (Devine's) to Dismiss (Dolan, J.) dated 11-15-83 (cs. 11-15-83)
74.	1983 Nov. 22	Memorandum of Decision on Plaintiff's Motion for leave to amend complaint (Dolan, J.) dated 11-15-83 (cs. 11-15-83
75.	1983 Nov. 22	Memorandum of Decision on Motion for Summary Judgment (Dolan, J.) dated 11-15-83 (cs. 11-15-83)

DOCKET ENTRIES

76. 1983 Nov. 22	Judgment of Dismissal (54b) Re: Defendants' Bishop Edward G. Carroll, J. Barclay w/costs (Dolan, J.) dated 11/15/83 (cs 11-15-83)
77. 1983 Nov. 22	Report (Dolan, J.) dated 11-15-83 (cs. 11-15-83)
78. 1983 Nov. 22	Memorandum on Status of parties and causes of action for report (Dolan, J.) (cs. 11-15-83)
79. 1983 Nov. 23	Notice of Service of Notice of the Report filed by Judge Dolan (cs.) Robert Doyle, Playter, Novick and Berkin sqs., 100 Boylston Street, Boston, Mass., Florence Freeman Esq., Freeman and Conceison Esqs., 483 Boston Post Road, P. O. Box 647, Weston, Mass., Deborah S. Griffin Esq., Peabody and Arnold, One Beacon Street, Boston
80. 1983 Nov. 23	Defendant's Objection to Judge Dolan's Decision of November 22, 1983

A True Copy

Attest:
Assistant Clerk

APPENDIX I

Extract from Minutes of 1973 Annual Conference as appended to William E. Alberts' Third Affidavit in Oposition to Motion for Summary Judgment

• • •

Board of Ministry. Bishop Carroll read a communication he had directed to Oliver Drake, chairman of the Board of Ministry, outlining his reasons for finding the Reverend William Alberts unappointable.

Recommendation. Oliver Drake read the recommendation of the Board of Ministry that Dr. William Alberts be given retired relationship in accordance with paragraph 360 of the 1972 Discipline of the United Methodist Church.

Mr. Drake presented his personal statement concerning the Board of Ministry's rationale for the recommendation.

William Alberts was recognized and presented his statement regarding the above matters.

Point of Order. A point of order was raised concerning the length of the statement.

Extension of Time. It was moved and voted to extend the time for 10 minutes for the completion of the statement.

Bishop Carroll announced that voting on the recommendation of the Board of Ministry would be limited to ministers in full connection, per paragraph 660 (a) of the 1972 Discipline.

Call for the Question. After considerable discussion a motion was made to call for the question. Following several requests for personal privilege the motion was defeated.

Personal Privilege. Eva Young moved that the privilege of the floor be granted to Harry Freeman Jones. This was approved.

Substitute Motion. Wilber Zeigler moved to substitute for the Board of Ministry recommendation the following: "According to paragraph 1540.6 of the Discipline I hereby bring charges against Bill Alberts according to paragraph 1521(c) and ask that this be referred to the Conference Committee on Investigation for their considered action". This motion was ruled out of order by the Bishop.

Extension of Time. On motion of Paul Irwin the Conference extended the time to 5:45.

Call for the Question. A call for the previous question was sustained. Time was extended. A motion to recess was defeated. A motion to take a written ballot was also defeated.

The motion to retire William Alberts under paragraph 360 of the Discipline was approved by a show of hands. The following persons asked to be recorded as voting in opposition to the motion: William Alberts, Jonathan Almond, Jerry Cook, Richard Evans, Leonard Gibbs, Richard Harding, Edgar Helms, David Hollenbeck, T. Landon Lindsay, and Alan R. Wood.

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS. **SUPERIOR COURT**
DOCKET NUMBER 114902

WILLIAM E. ALBERTS, Plaintiff :
:
v. : **COMPLAINT**
:
Donald T. Devine, Defendant :

1. On or about December 6, 1960, the plaintiff, William E. Alberts, Ph.D., now of 114 Summer Street, Somerville, Middlesex County, Massachusetts, at that time a minister in good standing with the Southern New England Conference of the United Methodist Church, consulted the defendant, Donald T. Devine, M.D., of 1144 Brush Hill Road, Milton, Norfolk County, Massachusetts, who was at that time, and at all times material to this complaint, a psychiatrist practicing in Boston, Suffolk County, Massachusetts, with respect to certain psychological difficulties then being encountered by the plaintiff.

2. At the time of the initial consultation alleged in paragraph 1, or alternatively at the time of various subsequent consultations as appears more fully below, the plaintiff and the defendant entered into an express contract or contracts for the provision of professional psychiatric services and treatment of the plaintiff by the defendant. Said services and treatment were provided by the defendant for a fee, and the contract or contracts pursuant to which they were provided is or are evidenced by the statements of account, rendered on the defendant's stationery, and sent to the plaintiff by the defendant from time to time between December 6, 1960 and December 31, 1972.

3. As an implied condition of the contract or contracts described in paragraph 2, and as a result of the defendant having held himself out to the plaintiff as a professional psychiatrist, the defendant warranted and represented to the plaintiff that the defendant would keep confidential all information, observations and opinions relating to the diagnosis, condition, behavior and treatment of the plaintiff gained by the defendant during the course of treatment of the plaintiff, and the plaintiff reasonably relied on said warranty and representation to his great damage.

4. The plaintiff continued to consult the defendant and the defendant continued to advise and treat the plaintiff pursuant to the contract or contracts described in paragraphs 1, 2 and 3 through November of 1972, and the plaintiff paid the defendant a total of approximately $750.00 for the services rendered pursuant thereto.

5. During one or more sessions for the treatment of the plaintiff held at the office of the defendant between October 26, 1972 and November 30, 1972, the plaintiff specifically instructed the defendant not to disclose certain facts and circumstances theretofore related to the defendant by the plaintiff in confidence, and the defendant, referring to his many years of experience as a physician, stated that he would respect the confidential nature of the relationship between doctor and patient.

6. On one or more occasions prior to June 7, 1973, the defendant disclosed to the plaintiff's superior in office, Bishop Edward G. Carroll of the United Methodist Church, or to the agents, servants, personal representatives of Bishop Carroll, or to other person or persons unknown, information concerning the diagnosis, condition, behavior or treatment of the plaintiff. Such disclosure was made without the knowledge or consent of the plaintiff, and was made in breach of the implied condition of confidentiality of the contract and the implied warranty of confidentiality alleged in paragraph 3, and in violation of the plaintiff's express instruction and the defendant's express representation described in paragraph 5.

7. As a result of the disclosure alleged in paragraph 6, the plaintiff suffered great mental anguish and humiliation, loss of livelihood, damage to his reputation, alienation of the respect and confidence of his colleagues, parishoners and friends. As a result of the disclosure alleged in paragraph 6, and using the information communicated thereby as a public justification, Bishop Carroll caused the plaintiff not to be reappointed as Minister of Old West Church in said Boston. As a result of the disclosure alleged in paragraph 6, the plaintiff has been obliged to incur expenses in the amount to date of approximately $2,000.00 for:

a.) the continuing psychological treatment of depression and anxiety and other disabling mental trauma produced or aggravated by the events resulting from the alleged disclosure;

b.) the assembly of rebuttal evidence and testimony in support of the plaintiff's efforts to retain his standing in the United Methodist Church; and

c.) travel and other costs connected with the plaintiff's efforts to secure alternate employment.

As a result of the disclosure alleged in paragraph 6, the plaintiff suffered the loss of benefits that would have accrued to him under the terms of a proposed contract of employment with the United Methodist Church for the year beginning June 7, 1973, totalling approximately $18,500.00, and he also suffered an impairment of his capacity for future earnings in the amount of approximately $200,000.00 by reason of the termination of his career as a Methodist minister, by the alienation of the editors and publishers of various church oriented media in which the plaintiff had formerly published extensively, and of the producers of various radio and television programs on which the plaintiff had formerly appeared, and by virtue of the alienation of various prospective employers of the plaintiff, several of whom have indicated to the plaintiff that

he would not be considered for employment because of adverse publicity stemming from the use of the information gained through the disclosure alleged in paragraph 6 to secure the forced retirement of the plaintiff from his position as Minister of said Old West Church. As a direct consequence of the disclosure alleged in paragraph 6 the plaintiff suffered loss of employment and was left with very few cash reserves; in January of 1974, the plaintiff was forced to terminate a pension fund being held for his benefit by the United Methodist Church, which termination prior to the plaintiff's having reached retirement age resulted in the loss of $4,600.00 contributed to the fund by the various churches served by the plaintiff during his career. The plaintiff therefore alleges that the defendant is responsible for the loss of these pension fund monies as well.

Wherefore the plaintiff demands judgement against the defendant in the amount of three hundred seventy-five thousand ($375,000.00) dollars, interest and costs.

The plaintiff claims the right to a jury trial of all issues.

Signed _____
Bruce V. Keary
Attorney for the Plaintiff
Address 88 Calumet Street
Boston, Mass 02120
Telephone 277-4741
Date March 4, 1975

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS. **March 4, 1975**

Subscribed and sworn to before me,

_____
Notary Public
My commission expires:

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS. **SUPERIOR COURT**
No. 114902

WILLIAM E. ALBERTS, PLAINTIFF :
: PLAINTIFF'S MOTION
v. :TO AMEND THE COMPLAINT
:
DONALD T. DEVINE, DEFENDANT :

Now comes the plaintiff and moves this honorable court for an order granting leave to amend the complaint in the above-captioned action pursuant to Rule 15(a) of the Massachusetts Rules of Civil Procedure by naming the following persons as additional parties defendant:

Edward G. Carroll
53 Worthington Road
Brookline, Massachusetts 02146

John E. Barclay
128 Bellevue Street
West Roxbury, Massachusetts 02132

and by adding the following language:

A. Additional paragraphs 4a-4e, to be inserted following paragraph 4:

"4a. The defendant Edward G. Carroll resides at 53 Worthington Road, Brookline, Norfolk County, Massachusetts.

"4b. The defendant John E. Barclay resides at 128 Bellevue Street, West Roxbury, Suffolk County, Massachusetts.

"4c. The defendant Carroll was appointed Resident Bishop of the Boston Area of the United Methodist Church in July of 1972 and served thereafter at all times material to this complaint as President of the Southern New England Conference of the United Methodist Church.

"4d. The defendant Barclay was for some time prior to July of 1972, and at all times thereafter material to this complaint the District Superintendent of the Greater Boston District of the Southern New England Conference of the United Methodist Church.

"4e. From July of 1972 and thereafter at all times material to this complaint the defendants Carroll and Barclay were the immediate superiors in office of the plaintiff within the established hierarchy of the United Methodist Church."

B. Additional paragraphs 6a-6c, to be inserted following paragraph 6:

"6a. On or about April 9, 1973, the defendants Carroll and Barclay, knowing the plaintiff to have been a patient of the defendant Devine, agreed to seek information concerning the plaintiff from the defendant Devine. Thereafter the defendant Carroll arranged an interview with the defendant Devine. At that interview, held on or about April 9, 1973, the defendants Carroll and Barclay induced the defendant Devine to breach the plaintiff's trust by soliciting the disclosures described in paragraph 6.

"6b. On various occasions between April 9, 1973 and June 7, 1973, the defendants Carroll and Barclay informed numerous individual members of the Southern New England Conference, as well as the various boards, committees and subcommittees of that Conference concerned with the appointment of its ministers to local churches, of their opinions of the plaintiff's mental health.

"6c. On various occasions between April 9, 1973 and June 7, 1973, the defendant Carroll related to individual members of the public, to public gatherings, and to reporters who he knew or should have known would cause his statements to be printed in the press, his belief that the plaintiff was mentally ill and therefore unappointable, and the fact that this belief was based on "competent consultation'."

C. The prayer on the last page of the complaint should be amended to read "Wherefore the plaintiff demands judgment against the defendants in the amount of $375,000.00, interest and costs."

The plaintiff informs the Court that the foregoing amendments are proposed as a result of the discovery of facts not known to the plaintiff at the time of filing of the original complaint, and are necessary in the interest of substantial justice.

by his attorney

Bruce V. Keary
Box 782
Boston, MA 02120 277-4611

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS. **SUPERIOR COURT**
CA NO. 114902

William E. Alberts, Plaintiff)
) **Memorandum on Status of**
v) **the Parties and Causes**
) **of Action for Report**
Donald T. Devine, ET AL, Defendants)

In order to provide a background of the status of the parties and to properly report the issues in question, it is necessary to set forth the travel of this case together with the dispositions of the court.

Original Complaint

At all times relevant to this action commenced in March of 1975, the plaintiff, William E. Alberts, was an ordained minister with the Southern New England Conference of the United Methodist Church. The defendant in the original complaint, Donald T. Devine, was a licensed physician in the Commonwealth of Massachusetts with a specialty and practice in the field of psychiatry.

In his original complaint, plaintiff stated that he became a patient of the defendant on October 26, 1972 and was treated by Dr. Devine until November 30, 1972.

Setting forth his cause of action, the plaintiff alleges in paragraph one of his complaint that an express contract arose between the plaintiff and the defendant for professional services to be rendered. Plaintiff further states in paragraph two that the defendant 'warranted' and 'represented' to the plaintiff as an 'implied condition' that he would keep confidential all information, observations and opinions derived from the course of treatment and that the plaintiff relied upon said warranty and representation. Paragraph five within said complaint refers to specific instructions directed to the plaintiff by the defendant not to disclose facts or circumstances revealed in confidence and that the defendant agreed to respect the confidential relationship. The alleged 'breach of the implied condition of confidentiality of the contract' and 'breach of the implied warranty of confidentiality' in the terminology of the plaintiff occurred or arose as a result of a conversation or conversations held between Bishop Edward

Carroll and Reverend John Barclay, the plaintiff's superiors in the Methodist Church. From that alleged breach, plaintiff submits that he suffered damage including but not limited to his not being reappointed to his post as minister of the Old West Church in Boston.

A reading of the original complaint with the terminology employed would lead to the conclusion that the cause of action sounded purely in contract leading the defendant to file his motion to amend his answer in February of 1983 to add the defense of the Statute of Frauds.[1]

Broadly construing the plaintiff's allegations and reading them as a whole together with the further allegations in his amended complaint, it would appear that the plaintiff states a cause of action for breach of a confidential relationship which sounds in tort and not purely in contract.

A further issue raised and the subject of a motion to dismiss by the defendant Devine is whether the elements of the cause of action as distilled from the complaint by the court is cognizable within the Commonwealth of Massachusetts as a cause of action for which relief may be granted.[2]

Amended Complaint

In December of 1975, plaintiff amended his complaint to add Edward G. Carroll who, at that time, held the position of Resident Bishop of the Boston Area of the United Methodist Church and further held the position of President of the Southern New

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[1]Defendant's motion to amend his answer was denied based upon the premise that the complaint did not sound purely in contract.

[2]See: Memoranda on defendant's motion to dismiss together with plaintiff's motion to amend his complaint and defendant's motion for summary judgment all appended.

England Conference of the United Methodist Church. In addition to the defendant Carroll, plaintiff added John E. Barclay, an ordained Methodist minister who, at that time, held the position of District Superintendent of the Greater Boston District of the Southern New England Conference of the United Methodist Church.

Plaintiff's cause of action against defendants Carroll and Barclay is stated in subparagraphs 6a through 6c and in summary alleges that Carroll and Barclay agreed to seek information from defendant Devine and on April 9, 1973 met with Dr. Devine and 'induced' Devine to 'breach the plaintiff's trust' by soliciting disclosures concerning the diagnosis, condition, behavior or treatment of the plaintiff. Plaintiff further alleges that Carroll and/or Barclay disseminated this information or their opinions concerning plaintiff's mental health to divers members and committees within the Southern New England Conference of the United Methodist Church. Plaintiff alleges further dissemination of said information by the defendant Carroll to members of the public and the press.

Reading the original complaint together with the amended complaint, the question arose as to whether the plaintiff based his cause of action against defendants Barclay and Carroll upon intentional tortious conduct by the defendants with the predication that the relationship between the plaintiff and the defendant Devine was a fiduciary or confidential relationship. Referring back to the original complaint that had the initial appearance of sounding purely in contract, the first impression of the cause of action within the amended complaint is one of alleging a tortious interference with a contractual relationship. Nevertheless, the status of the parties and the nature of the relationship does not lend itself to the standard or classic form of a tortious interference with the contractual relationship and the cause of action against defendants Barclay and Carroll is at best reduced to, as stated in the complaint, an inducement of defendant Devine to breach the relationship of trust with the plaintiff.

In February of 1983, plaintiff filed a motion to amend his complaint by adding counts sounding in malpractice as against the defendant Devine and invasion of privacy as against all defendants. The count alleging malpractice was subsequently withdrawn and an amended motion for leave to amend complaint to add a count for invasion of privacy as subparagraph 6d was filed.[3]

In February of 1983, the defendants Barclay and Carroll moved to amend their answer by adding an eighth defense, to wit:

> "The alleged actions by these defendants, if taken at all, were taken pursuant to their duties and authority as the plaintiff's superiors in the hierarchy of the United Methodist Church and as such are privileged and immune from inquiry by this court under the First and Fourteenth Amendments of the United State Constitution."

The amendment to the answer was allowed as a basic predicate to the rulings of this court upon the motion of the defendants Barclay and Carroll for summary judgment.

Brief Summary of the Status of the Parties and Case on Report

There existed in 1972 a patient/psychiatrist relationship between the plaintiff, William Alberts, and the defendant, Donald T. Devine, which ended on November 30, 1972 at the plaintiff's election.

In April of 1973, the defendant, John Barclay, as the plaintiff's immediate superior in his role as Superintendent, recommended to the defendant, Bishop Carroll, that they consult with the defendant Devine. The three parties met on April 9, 1973.

[3]See Memorandum of Decision on denial of plaintiff's motion to amend his complaint as to invasion of privacy.

The plaintiff claims that Devine revealed certain confidences to the defendants Barclay and Carroll. Devine contends that he revealed no confidential information to the defendants. This issue remains as a question of fact in the case of the plaintiff against Dr. Devine. The plaintiff submits that thereafter the defendant Carroll made statements to the public concerning his opinion of the plaintiff's mental health and that further discussions were held between Carroll and various members of the Annual Conference of the United Methodist Church relative to the plaintiff's mental or emotional health. The plaintiff claims that as a result, the conference refused to reappointment [sic] him to his ministerial post and that he was retired by vote of the conference.

Significant among the damages claimed by the plaintiff is the loss of livelihood specifying both salary loss and future retirement benefits.

The plaintiff brings before this civil court the actions of his superiors together with the actions of the governing and appointing body of the United Methodist Church. To establish a significant factor in his damages as claimed, the plaintiff would be required to show that the actions of his superiors were the proximate cause of his loss of livelihood. In proof of this element of damages, it would be required that judicial inquiry be made of the processes of appointment or nonappointment by the governing body of the church together with consideration by a civil court of the interpretation and application of certain codes or canons of this church as embodied within its 'Book of Discipline'.

The defendants Barclay and Carroll have appropriately raised the question of law relative to the actions of the church concerning one of its ministers and the privileges and immunities granted under the First and Fourteenth Amendments of the United States Constitution. This court entered summary judgment for both Barclay and Carroll on the constitutional issue as raised.[4]

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[4]See Memorandum of Decision on allowance of summary judgment for defendants Barclay and Carroll.

Although the case against the defendant Devine remains facially viable, any further discovery or testimony by the defendants Barclay and Carroll would result in their invocation of the privileges or immunities heretofore discussed. Therefore, the plaintiff would be prevented from establishing any causal nexus between the purported breach by Devine and the subsequent actions of Barclay and Carroll in presenting his case for damages.

The allowance of the summary judgments for Barclay and Carroll so affects the merits of this controversy that the trial between the plaintiff and Devine is stayed.

The issues raised on the summary judgments are reported after decision and entry of final judgment as to Barclay and Carroll and the issues raised on interlocutory matters of the plaintiff's motion to amend to add a count of invasion of privacy and the denial of defendant Devine's motion to dismiss for failure to state a cause of action cognizable by this court are further reported due to the nature of the complaint as filed and the status of the pleadings.

By the Court,

Elizabeth J. Dolan
Associate Justice
Superior Court
Dated: _____

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.	**SUPERIOR COURT DEPARTMENT** **CIVIL ACTION NO. 114902**

WILLIAM E. ALBERTS	)	
	)	
	)	WILLIAM E. ALBERT'S
V.	)	AFFIDAVIT IN OPPOSITION
	)	TO DEFENDANT BARCLAY'S
DONALD DEVINE,	)	MOTION FOR SUMMARY
et al.	)	JUDGMENT

William E. Alberts deposes and says as follows:

1. At all times relevant to this case I was an ordained minister in the United Methodist Church and the minister of Old West Church in Boston, Massachusetts.

2. While I was a Ph.D. candidate at Boston University School of Theology, I experienced a sort of writer's block while working on my dissertation. At that time, I began to see Dr. Donald T. Devine, a psychiatrist, for therapy. I continued as Dr. Devine's patient until November 30, 1972 when I terminated the doctor-patient relationship.

3. During the course of my ministry at Old West Church, I initiated and/or participated in a number of projects that were controversial. These ranged from advocating that the funds from John Barclay's former church (Church of All Nations) be turned over for social programs and for the purpose of a group of Black Methodist ministers, to getting arrested at an anti-war sit-in, to performing a marriage of homosexuals.

4. According to deposition testimony of each of the three defendants, defendants Barclay and Carroll, on April 9, 1973, consulted with my former psychiatrist, defendant Devine, and obtained information from him concerning my mental condition.

5. Defendant Carroll in his deposition stated that defendant Barclay suggested that he and Carroll meet with Devine and that Barclay arranged for the meeting. See page 59 of the transcript of Carroll's deposition attached hereto as Exhibit 1 and incorporated herein by reference. According to Carroll's deposition testimony, Devine stated that the Dr. Alberts was paranoid. See page 66 and 67 of Carroll's deposition attached hereto as Exhibits 2A and B and incorporated herein by reference.

6. Defendant Barclay admitted in his deposition that it was he who arranged the meeting among Devine, Carroll and Barclay. See page 100 of the transcript of this deposition attached hereto as Exhibit 3 and incorporated herein by reference.

7. After the April 9, 1973 meeting among the defendants, defendant Carroll made public declarations that I was "sick" and/or "paranoid" and that he had obtained this information from psychiatrists who knew me. He made these statements to a *Boston Globe* reporter on or about April 13, 1973, to me on or about April 30, 1973, to a press conference on or about May 7, 1973 and to a meeting of a United Methodist Church committee on May 14, 1973 and again on May 24, 1973.

I have a tape recording of the May 7, 1973 press conference at which the statements were made and I recognize the voice of Edward Carroll. A copy of the minutes of the May 14, 1973 committee meeting is attached hereto as Exhibit 4 and incorporated herein by reference.

8. Defendant Carroll also stated to me on April 30, 1973 that he would not appoint me because of my mental condition. He reiterated this statement at a gathering at his house on May 4, 1973. At that time he also revealed that one of the psychiatrists upon whom he was relying had examined me.

9. In his deposition, defendant Carroll stated that the only psychiatric information about me came from Devine and he had a casual conversation with an unidentified friend and psychiatrist who helped to define some terms. See 83 and 84 of this deposition attached hereto as Exhibits 5A and B and incorporated herein by reference.

10. The power to appoint a person to a post of a minister is held exclusively by the Bishop of a particular conference. During the events under consideration, defendant Carroll was the Bishop of my conference and he alone held this power.

The Conference had the power to define my relationship to the Conference, but could not make an appointment of me to a post. After Carroll determined that he would not appoint me to be minister of Old West Church, or any church as he stated to me, the Conference was convinced by him to change my status to forcible retirement.

11. The Bishop's sole responsibility for appointments was verified by defendant Barclay in his deposition. See page 44 of his deposition attached hereto as Exhibit 6.

12. Pages 182 and 183 of the Book of Discipline of the United Methodist Church spell out the duties of a Bishop in making appointments of ministers. This book sets out basic rules by which the United Methodist Church operates. Copies of these pages are attached hereto as Exhibits 7A and B and incorporated herein by reference.

13. I have read the affidavit of John Barclay. In paragraph 3 of that affidavit he states that he "counselled" me at my request concerning marital problems. This is not true. Reverend Barclay did not counsel me in regard to this problem. I attended his deposition and to the extent that he was allowed to testify about the relationship between him and me, he never made such an assertion. In his testimony he stated that he suggested that Bishop Carroll meet with Dr. Devine to assist the Bishop, contrary to his assertion in paragraph 4 of his affidavit.

14. None of the defendants requested my permission for their consultation of April 9, 1973 nor was any given. Previously, I had instructed Dr. Devine not to discuss my situation with Bishop Carroll or anyone else.

15. As part of the agreement between Dr. Devine and myself I thought that our relationship was completely confidential. Dr. Devine testified that he maintains strict confidentiality with his patients. See copy of page 108, Vol. 2 of Devine's deposition attached hereto as Exhibit 8 and incorporated herein by reference.

Signed this 25th day of January, 1983 under the pains and penalties of perjury.

William E. Alberts

Q And who requested this meeting with Dr. Devine?

A At the suggestion of the superintendent, John Barclay, he thought that I should talk with Dr. Devine; and arranged for my meeting with him.

Q When you say at the suggestion of John Barclay, did you talk to John Barclay about Bill Alberts subsequent to this March 21 meeting?

A I probably did. He's the superintendent; and we would have been in conversation about him in terms of the leave and other matters.

Q Well, did you have a conversation with him about Bill Alberts? With Barclay, I'm talking about now.

A I had the conversation about his getting the leave; and that the provision of the care of the church had been arranged. Sure.

Q Well, I want to know what you said to Bill Barclay and what he said to you.

A You mean to John Barclay.

Q John Barclay. That's what I'd like to find out.

A I think I said ——

Q And if you could be so kind as to state just about approximately when you said this, and where.

A At some time before this, you know ——

Q Before ——

to believe that he was emotionally —— that's not, I don't know how to say it ——

Q Just say what you said.

A That he had fears of me; and the like.

And I stated to the doctor that as a minister, I have done this; I have, in dealing with parishoners and trying to make sure of pastoral care, I have simply consulted —— after explaining, you know, certain behavior and feelings and actions and all, you know, what kind of person do you feel I'm dealing with. Most of these have been informal discussions. I mean, nothing —— I mean, no technical or anything like that. And psychiatrists have usually said, well, you know, I think you're dealing with this kind of a personality or that kind of a personality; and you should relate yourself in this way or that way.

So I explained this to Dr. Devine. And so I said, I know that he had treated Dr. Alberts, and I wanted him just to give me some help in terms of the kind of personality, if there was any, you know — with whom I was dealing.

And he said to me, "Well, Bishop, you're dealing with paranoia of the self-destructive type." And that it would be good that he would get help. He realized he wasn't coming to him, because he had broke with him; but that he felt that he needed an M.D. psychiatrist —— whether he'd go to someone else for purposes of getting any kind of medication that he needed. And could —— and if he did this in time, he probably would be all right, and could assume his duties as a Pastor.

Now, we might have talked about other things. If you know me, —— you don't know me; but I don't like to waste people's time, but one thing can go to another. I think we talked about the homosexual issue, because this was in the press; and this could consume some time.

Q Well, could you tell us what you discussed about the homosexual issue, to the best of your memory?

A Only the things that were reported in terms that I had objected to this marriage, and how I felt about it.

Q Would you state what you said? To Dr. Devine, I'm talking about; what you said to him.

A Well, I'm not sure that all this took place, you see.

Q Well, to the best of your memory.

A To the best of my memory, I simply repeated my feelings

A Within a week.

Q What is it that you said to Dr. Devine when you called him on the phone, sir?

A Well, one of our pastors has been seeking to be an effective minister, and we have a difficult situation at Old West Church, and he has indicated and other folks are aware that you had been his therapist. Would you be willing to meet with the Bishop and it developed in the conversation how the Bishop and I could be helpful in the resolution of what his client is going through and how that might best be effected.

Q And you had, of course, talked this over with Dr. Alberts ahead of time?

A Would you phrase that again?

Q You had gone to Dr. Alberts and talked it over with him, talked over this meeting with Dr. Devine?

A No. We did dicuss at the meeting at my house, when he was tired, worn out, and I proposed that I be willing to call a meeting of the pastor/parrish relations committee and the leave of absence be granted.

Q My question ———

A Excuse me. And he said, "John, would you?"

A.111

DONALD DEVINE DEPOSITION

Vol. I, pages 59-61

Filed by defendants Carroll & Barclay

A. You use this word "respond" in a way I cannot understand.

Q. Well, I guess I better get to it. Did Bishop Carroll come to you about Dr. Alberts?

A. Yes, he did.

Q. And what did he say when he came to see you?

A. Well, may I preface it by saying that the Rev. John Barclay, who was District Superintendent at the time, called me to arrange for an appointment for his superior, the Bishop, to see me, stating that the Bishop felt Bill was too sick to function in the ministry and the Bishop wanted to discuss with me how best to present this to Bill in a christian way and to get him the help that he needed.

Q. In other words, the initial phone call from the Bishop's office, as it were, from the Methodist structure, came from Rev. Barclay.

A. Yes.

Q. And in the initial phone call, he mentioned that he wanted to speak to you about your patient, Dr. Alberts.

A. My former patient. Bill had adamantly